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CONTENTS

LEADING ARTICLES.

DISCUSSION.

PERSONAL NOTES.

MISCELLANY.

BOOK REVIEWS.

NOTES.

ERRATA.

PAG	LINE.	IN PLACE OF.	READ.
85	17	collegiate	non-collegiate
86	27	places	cases
	29	and	or
87	1	trial	final
88	21	its	the
89	12	W.	Mr.
90	16	terms	term
	16	term	term's
	17–18	partially	partly
91	4	professional	professorial
92	3–4		
109	4	1891	1890
219	Note	Analysis	Analisi
251	last	1844	1854
253	18	Wilcox	Willcox
254	26	Mickelson	Mikkelsen
	33	Wilgers	Wilgus
255	14, 17, 32	Sternogg	Sternogg
258	1	Allgemeinen	Allgemeines
	2	Statistischen	Statistisches
266	23	Waats	Watts
275	27	Ricthie	Ritchie
363	14	College	University
364	31	Wilcox	Willcox
567	17	Schullern von	von Schullern
663	3	his	their
	6	his	their
700	6	quarter	forty years
703	30	Constitution	national Statute
704	16	and	or

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3/790

JULY, 1891.

CONSTITUTION OF THE UNITED STATES OF MEXICO.

ANTECEDENTS.

IN seeking independence the Spanish colonies in America were moved by the democratic doctrines of France and by the example of the United States. Their long submission to Spanish rule had, however, given rise to traditions which tended to keep them loyal to monarchy. But when Ferdinand VII. fell into the hands of Napoleon, the bond of attachment to Spain was weakened, and signs of revolt appeared. The open struggle for independence, which began in 1810 and lasted with occasional interruptions till 1824, stands in marked contrast with the efforts of the English Colonies. It had many of the characteristics of a civil war, on account of the large number of those who advocated continued dependence on Spain, while the more complete unity of purpose in the English Colonies gave

their war for independence the character of a struggle against a foreign enemy.

An early suggestion of a national representative government for Mexico appeared in the proposition made by the ayuntamiento of the City of Mexico to the Viceroy that he should call a national assembly composed of representatives of the provinces. This proposition was favored by the Viceroy, but was opposed by the *Audiencia*, who represented the spirit of Spanish possession and dominion. The higher clergy, moreover, as holders of great power, opposed all attempts at independence; while the lower clergy, to which Miguel Hidalgo i Costilla belonged, became the earliest champions of the movement.

After the overthrow of Hidalgo's forces and the capture of the leader it became evident to the patriots that they ought be represented by some formally constituted government. An assembly composed principally of officers of the army was, therefore, convened. In accordance with its decree a governmental council was established, consisting at first of three members and later of five, whose collective title was the "Supreme Governmental Council of America." In the exercise of their new authority they cited the military officers, the governors, and alcaldes of the Indian pueblos of the vicinity to take the oath of obedience and fidelity to the Council, which governed in the name of King Ferdinand VII. The use of the King's name was clearly an act of policy, through which the Council hoped to gain forces at the expense of the enemy, and to turn to the cause of freedom those who desired independence but who halted at the idea of fighting against the King. The attempt on the part of the Council to make an agreement with the Viceroy only led him to reject with indignation the project of an independent power in Mexico. Strictly speaking, the Council was an illegal body, deriving authority neither from a popular election nor from any existing legitimate source. It was feared, however, by the Spanish party that it might gain recognition

and exercise the functions of a legitimate government. A price was, therefore, set on the head of each member, but its subsequent dissolution was due rather to internal dissension than to external attack.

On the 1st of September, 1813, a Congress constituted by popular election was assembled in Chilpancingo. This body proclaimed anew the independence of Mexico, and agreed upon a republican Constitution, which was published in Apanzingan in October, 1814. This Constitution was also short-lived, being set aside by the adoption of the Spanish Constitution of 1812, in so far as it was applicable to Mexico.

Between 1815 and 1820 Mexico was little disturbed by military operations, but finally the cause of independence was revived, and on the 24th of February, 1820, was published the Plan of Iguala. By this instrument an independent limited monarchy was erected in Mexico, and the throne was to be offered to Ferdinand VII., and in case of his refusal to other princes designated. The Roman Catholic faith was declared to be the sole religion of the state, and the equality of all social classes was proclaimed. The Plan of Iguala, a compromise between political independence and religious intolerance, found very general favor; even the new Viceroy, O'Donojú, accepted it with only slight modifications, and recognized the new *Imperio Mejicano*. A provisional Governmental Council was then formed, which was charged with the legislative authority until the Cortes should be installed. The executive power was temporarily entrusted to a regency of three persons, who should exercise it till the accession of the prince. In carrying out the provisions of the Plan of Iguala, as modified by the agreement at Cordova between O'Donojú and Iturbide, it was discovered that the scheme was not approved by either the King or the Cortes of Spain, and that in Mexico itself there were many republicans dissatisfied with it. In this condition of affairs, Iturbide, supported by a portion of the army, was proclaimed Emperor. But his conduct in his temporary use of power

only increased the opposition which he had encountered in the beginning; and, finding it impossible to maintain an independent imperial government in Mexico, he abdicated and went into exile. The Congress, taking advantage of the departure of Iturbide, declared that his administration had been a rule of force and not of right, and that all of his acts were illegal and subject to revision. It then placed the executive power in the hands of a triumvirate composed of Negrete, Bravo, and Victoria, representing the Spanish, the monarchical, and the republican parties.

A new Congress was installed on the 7th of November, 1823, and on the 3d of December it began the discussion of a project for a fundamental law, which was approved January 31, 1824, and "in thirty-six articles contained the basis of the future political Constitution." Through the adoption of this Constitution the nation acquired a popular representative, federal, republican government. But this was only a provisional government, and was set aside on the adoption of the definitive Constitution of 1824, which in many particulars was a copy of the Constitution of the United States.

The Constitution of 1824 remained in force eleven years, but during these years Mexico was not without its internal disturbances; and in 1833, by a revolution, General Antonio Lopez de Santana was made President. After a temporary retirement, a reactionary movement restored him to power in 1834. Having allied himself with the clericals and centralists, he dissolved the Congress on the 31st of May, set aside the liberal decrees which that body had passed, made the Vice-President, Gomez Farias, resign, and broke openly with the federalists. The new Congress which was installed in January, 1835, undertook to reform the Constitution of 1824, and in 1836 a new fundamental law was issued, which rejected the federal principle and established a centralized government, the whole territory of the Republic being divided into departments instead of the preëxisting States,

the departments into districts, and these again into partidos. By thus enlarging the functions of the central Government the grounds of party separation were made more conspicuous. Every adherent of federalism became an opponent of the new order of things, and in the next decade Mexico was without an effective Constitution. Power rested with the most successful military leader. In 1847, however, the Congress passed an Act which brought into force again the Constitution of 1824, with certain amendments.

Without attempting to note the numerous "pronunciamentos" made and the "bases" promulgated, attention may be called to the "Plan" promulgated by the garrison of Ayutla. According to this plan Santana was to be deprived of the power which he exercised arbitrarily, an *ad interim* President was to be appointed, and a Constitutional Convention convened. The garrison of Acapulco seconded this plan with slight modifications, and Ignacio Comonfort became the leader of the new revolution. On the 8th of August, 1855, Santana left the Presidency, and a few days later went into exile. On the 13th of the same month the garrison of the capital also adopted the Plan of Ayutla. The 4th of October General Alvarez was elected *ad interim* President, and in February, 1856, the Constituent Congress, or Constitutional Convention, was assembled. Comonfort, who had become President on the resignation of Alvarez, now issued, in accordance with authority conferred upon him by the Plan of Ayutla and Acapulco, an "*Estatuto orgánico provisional de la Republica Mejicana.*" The *estatuto* was a quasi-Constitution, in 125 articles, which organized completely the executive and judicial powers in accordance with the principles of centralism, and which detailed with much method and in a liberal sense the civil and political rights of the Mexicans; but which obliterated all this, as with one dash of the pen, by Article 82, conceived as follows: "The President of the Republic shall be able to act discretionally, when, in the judgment of the Council of Ministers, this shall be necessary in order to

defend the independence or the integrity of the territory, or to maintain the established order, or to preserve the public tranquillity; but in no case shall he be able to impose the penalty of death, nor those penalties prohibited by Article 55."

The new Constitution, which was formulated in the meantime by the Constituent Congress, was finally adopted on the 5th of February, 1857. But this Constitution, by abolishing the ecclesiastical and military privileges, excited vigorous opposition. As a result of this opposition, the nation found itself, in 1858, in civil war, with Benito Juarez as leader of the Constitutional party, while General Zuloaga, and later General Miramon, led the Revolutionary party. Having, in 1861, overcome the Revolutionary forces and taken possession of the capital, Juarez, in accordance with Article 29 of the Constitution, received extraordinary powers to suspend the individual guarantees recognized by this law. During the same year, 1861, the Revolutionary party entered into certain foreign alliances against the Constitutional party, led by Juarez, and from these alliances proceeded the series of events which constitute the Imperial episode of Maximilian's reign. While Maximilian, backed by the power of France, was attempting to establish an imperial government in Mexico, the forces of the Constitutionalists were scattered on the frontiers. Three months after the withdrawal of the French troops, in obedience to the demands of the United States, the Imperialists were undone, Maximilian, Miramon, and Mejia had been shot, and the way was once more open to the Constitutionalists. The Constitution of 1857 became again the effective fundamental law of the land, and, with a number of subsequent amendments, has continued in force to the present time.

BERNARD MOSES.

University of California.

[OUTLINE OF CONTENTS.[1]

[1] The Outline of Contents has been prepared by the Editors of the ANNALS.

TITLE IV. OF THE RESPONSIBILITY OF PUBLIC FUNCTIONARIES.

ARTICLE

103. Public functionaries responsible for crimes, misdemeanors, and negligence. General provisions.
104. Common crimes.
105. Official crimes.
106. Pardons for official crimes forbidden.
107. Duration of responsibility.
108. No immunity from demands of civil order.

TITLE V. OF THE STATES OF THE FEDERATION.

109. Republican form of government.
110. Fixing of State boundary lines.
111. I.–III. Prohibitions on the States.
112. I.–II. Powers which are conditioned on consent of Congress.
113. Extradition of criminals.
114. Obligation of State Governors to enforce Federal laws.
115. Faith and credit to public acts, records, etc., of other States.
116. Protection against invasion and violence.

TITLE VI. GENERAL PROVISIONS.

117. Powers reserved to the States.
118. No person allowed to hold two Federal elective offices.
119. Federal payments, not authorized by law, forbidden.
120. Compensation of Federal officers.
121. Oath of office.
122. Military authority in time of peace.
123. Intervention in religious worship and external discipline.
124. Duties on articles of internal commerce. State restrictions on foreign and domestic commerce.
125. Federal forts, magazines, etc.
126. Supreme law of the Union.

TITLE VII. OF THE REFORM OF THE CONSTITUTION.

127. Process of amendment.

TITLE VIII. OF THE INVIOLABILITY OF THE CONSTITUTION.

128. Interruption of its observance by rebellion.

ADDITIONS TO THE CONSTITUTION.

1. Independence of State and Church. —
2. Marriage and other civil contracts.
3. Limitation on the power of religious institutions to acquire real estate.
4. Affirmation substituted for religious oath.]

PREAMBLE.

In the name of God and with the authority of the Mexican people.

The representatives of the different States, of the District and Territories which compose the Republic of Mexico, called by the Plan proclaimed in Ayutla the 1st of March, 1854, amended in Acapulco the 11th day of the same month and year, and by the summons issued the 17th of October, 1855, to constitute the nation under the form of a popular, representative, democratic republic, exercising the powers with which they are invested, comply with the requirements of their high office, decreeing the following political Constitution of the Mexican Republic, on the indestructible basis of its legitimate independence, proclaimed the 16th of September, 1810, and completed the 27th of September, 1821.

TITLE I.

SECTION I. OF THE RIGHTS OF MAN.

ARTICLE 1. The Mexican people recognize that the rights of man are the basis and the object of social institutions. Consequently they declare that all the laws and all the authorities of the country must respect and maintain the guarantees which the present Constitution establishes.

ART. 2. In the Republic all are born free. Slaves who set foot upon the national territory recover, by that act alone, their liberty, and have a right to the protection of the laws.

ART. 3. Instruction is free. The law shall determine what professions require a diploma for their exercise, and with what requisites they must be issued.

ART. 4. Every man is free to adopt the profession, industrial pursuit, or occupation which suits him, the same being useful and honorable, and to avail himself of its products. Nor shall anyone be hindered in the exercise of such profession, industrial pursuit, or occupation, unless by judicial sentence when such exercise attacks the rights of a third party, or by governmental resolution, dictated in terms which the law marks out, when it offends the rights of society.

ART. 5. No one shall be obliged to give personal services without just compensation, and without his full consent. The state shall not permit any contract, pact, or agreement to be carried into effect which has for its object the diminution, loss, or irrevocable sacrifice of the liberty of man, whether it be for the sake of labor, education, or a religious vow. The law, consequently, may not recognize monastic orders, nor may it permit their establishment, whatever may be the denomination or object with which they claim to be formed.[1] Neither may an agreement be permitted in which anyone stipulates for his proscription or banishment.

ART. 6. The expression of ideas shall not be the object of any judicial or administrative inquisition, except in case it attacks morality, the rights of a third party, provokes some crime or misdemeanor, or disturbs public order.

ART. 7. The liberty to write and to publish writings on any subject whatsoever is inviolable. No law or authority shall establish previous censure, nor require security from authors or printers, nor restrict the liberty of the press, which has no other limits than respect of private life, morality, and the public peace. The crimes which are committed by means of the press shall be judged by the competent tribunals of the Federation, or by those of the

[1] This sentence was introduced into the original article September 25, 1873, with other less important amendments.

States, those of the Federal District and the Territory of Lower California, in accordance with their penal laws.[1]

ART. 8. The right of petition, exercised in writing in a peaceful and respectful manner, is inviolable; but in political matters only citizens of the Republic may exercise it. To every petition must be returned a written opinion by the authority to whom it may have been addressed, and the latter is obliged to make the result known to the petitioner.

ART. 9. No one may be deprived of the right peacefully to assemble or unite with others for any lawful object whatsoever, but only citizens of the Republic may do this in order to take part in the political affairs of the country. No armed assembly has a right to deliberate.

ART. 10. Every man has a right to possess and carry arms for his security and legitimate defence. The law shall designate what arms are prohibited and the punishment which those shall incur who carry them.

ART. 11. Every man has a right to enter and to go out of the Republic, to travel through its territory and change his residence, without the necessity of a letter of security, passport, safe-conduct, or other similar requisite. The exercise of this right shall not prejudice the legitimate faculties of the judicial or administrative authority in cases of criminal or civil responsibility.

ART. 12. There are not, nor shall there be recognized in the Republic, titles of nobility, or prerogatives, or hereditary honors. Only the people, legitimately represented, may decree recompenses in honor of those who may have rendered or may render eminent services to the country or to humanity.

ART. 13. In the Mexican Republic no one may be judged by special law nor by special tribunals. No person

[1] This article was amended May 15, 1883, by introducing the last sentence as a substitute for the following: "The crimes of the press shall be judged by one jury which attests the fact and by another which applies the law and designates the punishment."

or corporation may have privileges, or enjoy emoluments, which are not compensation for a public service and are established by law. Martial law may exist only for crimes and offences which have a definite connection with military discipline. The law shall determine with all clearness the cases included in this exception.

ART. 14. No retroactive law shall be enacted. No one may be judged or sentenced except by laws made prior to the act, and exactly applicable to it, and by a tribunal which shall have been previously established by law.

ART. 15. Treaties shall never be made for the extradition of political offenders, nor for the extradition of those violators of the public order who may have held in the country where they committed the offence the position of slaves; nor agreements or treaties in virtue of which may be altered the guarantees and rights which this Constitution grants to the man and to the citizen.

ART. 16. No one may be molested in his person, family, domicile, papers and possessions, except in virtue of an order written by the competent authority, which shall establish and assign the legal cause for the proceeding. In the case of *in flagrante delicto* any person may apprehend the offender and his accomplices, placing them without delay at the disposal of the nearest authorities.

ART. 17. No one may be arrested for debts of a purely civil character. No one may exercise violence in order to reclaim his rights. The tribunals shall always be prompt to administer justice. This shall be gratuitous, judicial costs being consequently abolished.

ART. 18. Imprisonment shall take place only for crimes which deserve corporal punishment. In any state of the process in which it shall appear that such a punishment might not be imposed upon the accused, he shall be set at liberty under bail. In no case shall the imprisonment or detention be prolonged for default of payment of fees, or of any furnishing of money whatever.

ART. 19. No detention shall exceed the term of three

days, unless justified by a writ showing cause of imprisonment and other requisites which the law establishes. The mere lapse of this term shall render responsible the authority that orders or consents to it, and the agents, ministers, wardens, or jailers who execute it. Any maltreatment in the apprehension or in the confinement of the prisoners, any injury which may be inflicted without legal ground, any tax or contribution in the prisons, is an abuse which the laws must correct and the authorities severely punish.

ART. 20. In every criminal trial the accused shall have the following guarantees:

I. That the grounds of the proceedings and the name of the accuser, if there shall be one, shall be made known to him.

II. That his preparatory declaration shall be taken within forty-eight hours, counting from the time he may be placed at the disposal of the judge.

III. That he shall be confronted with the witnesses who testify against him.

IV. That he shall be furnished with the *data* which he requires and which appear in the process, in order to prepare for his defence.

V. That he shall be heard in defence by himself or by counsel, or by both, as he may desire. In case he should have no one to defend him, a list of official defenders shall be presented to him, in order that he may choose one or more who may suit him.

ART. 21. The application of penalties properly so called belongs exclusively to the judicial authority. The political or administrative authorities may only impose fines, as correction, to the extent of five hundred dollars, or imprisonment to the extent of one month, in the cases and manner which the law shall expressly determine.

ART. 22. Punishments by mutilation and infamy, by branding, flogging, the bastinado, torture of whatever kind, excessive fines, confiscation of property, or any other unusual or extraordinary penalties, shall be forever prohibited.

ART. 23. In order to abolish the penalty of death, the administrative power is charged to establish, as soon as possible, a penitentiary system. In the meantime the penalty of death shall be abolished for political offences, and shall not be extended to other cases than treason during foreign war, highway robbery, arson, parricide, homicide with treachery, premeditation or advantage, to grave offences of the military order, and piracy, which the law shall define.

ART. 24. No criminal proceeding may have more than three instances. No one shall be tried twice for the same offence, whether by the judgment he be absolved or condemned. The practice of absolving from the instance is abolished.

ART. 25. Sealed correspondence which circulates by the mails is free from all registry. The violation of this guarantee is an offence which the law shall punish severely.

ART. 26. In time of peace no soldier may demand quarters, supplies, or other real or personal service without the consent of the proprietor. In time of war he shall do this only in the manner prescribed by the law.

ART. 27. Private property shall not be appropriated without the consent of the owner, except for the sake of public use, and with previous indemnification. The law shall determine the authority which may make the appropriation and the conditions under which it may be carried out.

No corporation, civil or ecclesiastical, whatever may be its character, denomination, or object, shall have legal capacity to acquire in proprietorship or administer for itself real estate, with the single exception of edifices destined immediately and directly to the service and object of the institution.[1]

ART. 28. There shall be no monopolies, nor places of any kind for the sale of privileged goods, nor prohibitions under titles of protection to industry. There shall be

[1] See Article 3 of Additions to the Constitution.

excepted only those relative to the coining of money, to the mails, and to the privileges which, for a limited time, the law may concede to inventors or perfectors of some improvement.

ART. 29. In cases of invasion, grave disturbance of the public peace, or any other cases whatsoever which may place society in great danger or conflict, only the President of the Republic in concurrence with the Council of Ministers and with the approbation of the Congress of the Union, and, in the recess thereof, of the permanent deputation, may suspend the guarantees established by this Constitution, with the exception of those which assure the life of man; but such suspension shall be made only for a limited time, by means of general provisions, and without being limited to a determined person. If the suspension should take place during the session of Congress, this body shall concede the authorizations which it may esteem necessary in order that the Executive may meet properly the situation. If the suspension should take place during the recess, the permanent deputation shall convoke the Congress without delay in order that it may make the authorizations.

SECTION II. OF MEXICANS.

ART. 30. Mexicans are—

I. All those born, within or without the Republic, of Mexican parents.

II. Foreigners who are naturalized in conformity with the laws of the Federation.

III. Foreigners who acquire real estate in the Republic or have Mexican children; provided they do not manifest their resolution to preserve their nationality.

ART. 31. It is an obligation of every Mexican—

I. To defend the independence, the territory, the honor, the rights and interests of his country.

II. To contribute for the public expenses, as well of the Federation as of the State and municipality in which he

resides, in the proportional and equitable manner which the laws may provide.

ART. 32. Mexicans shall be preferred to foreigners in equal circumstances, for all employments, charges, or commissions of appointment by the authorities, in which the condition of citizenship may not be indispensable. Laws shall be issued to improve the condition of Mexican laborers, rewarding those who distinguish themselves in any science or art, stimulating labor, and founding practical colleges and schools of arts and trades.

SECTION III. OF FOREIGNERS.

ART. 33. Foreigners are those who do not possess the qualifications determined in Article 30. They have a right to the guarantees established by Section I., Title I., of the present Constitution, except that in all cases the Government has the right to expel pernicious foreigners. They are under obligation to contribute to the public expenses in the manner which the laws may provide, and to obey and respect the institutions, laws, and authorities of the country, subjecting themselves to the judgments and sentences of the tribunals, without power to seek other protection than that which the laws concede to Mexican citizens.

SECTION IV. OF MEXICAN CITIZENS.

ART. 34. Citizens of the Republic are all those who, having the quality of Mexicans, have also the following qualifications:

I. Eighteen years of age if married, or twenty-one if not married.

II. An honest means of livelihood.

ART. 35. The prerogatives of the citizen are—

I. To vote at popular elections.

II. The privilege of being voted for *for* any office subject to popular election, and of being selected for any other

employment or commission, having the qualifications established by law.

III. To associate to discuss the political affairs of the country.

IV. To take up arms in the army or in the national guard for the defence of the Republic and its institutions.

V. To exercise in all cases the right of petition.

ART. 36. Every citizen of the Republic is under the following obligations:

I. To be inscribed on the municipal roll, stating the property which he has, or the industry, profession, or labor by which he subsists.

II. To enlist in the national guard.

III. To vote at popular elections in the district to which he belongs.

IV. To discharge the duties of the offices of popular election of the Federation, which in no case shall be gratuitous.

ART. 37. The character of citizen is lost—

I. By naturalization in a foreign country.

II. By serving officially the government of another country or accepting its decorations, titles, or employments without previous permission from the Federal Congress; excepting literary, scientific, and humanitarian titles, which may be accepted freely.

ART. 38. The law shall prescribe the cases and the form in which may be lost or suspended the rights of citizenship and the manner in which they may be regained.

TITLE II.

SECTION I. OF THE NATIONAL SOVEREIGNTY AND OF THE FORM OF GOVERNMENT.

ART. 39. The national sovereignty resides essentially and originally in the people. All public power emanates from the people, and is instituted for their benefit. The

people have at all times the inalienable right to alter or modify the form of their government.

ART. 40. The Mexican people voluntarily constitute themselves a democratic, federal, representative republic, composed of States free and sovereign in all that concerns their internal government, but united in a federation established according to the principles of this fundamental law.

ART. 41. The people exercise their sovereignty by means of Federal officers in cases belonging to the Federation, and through those of the States in all that relates to the internal affairs of the States within the limits respectively established by this Federal Constitution, and by the special Constitutions of the States, which latter shall in no case contravene the stipulations of the Federal Compact.

SECTION II. OF THE INTEGRAL PARTS OF THE FEDERATION AND OF THE NATIONAL TERRITORY.

ART. 42. The National Territory comprises that of the integral parts of the Federation and that of the adjacent islands in both oceans.

ART. 43. The integral parts of the Federation are: the States of Aguascalientes, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Jalisco, Mexico, Michoacan, Nuevo Leon and Coahuila, Oajaca, Puebla, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlascala, Valle de Mexico, Vera Cruz, Yucatan, Zacatecas, and the Territory of Lower California.

ART. 44. The States of Aguascalientes, Chiapas, Chihuahua, Durango, Guerrero, Mexico, Puebla, Querétaro, Sinaloa, Sonora, Tamaulipas, and the Territory of Lower California shall preserve the limits which they now have.

ART. 45. The States of Colima and Tlascala shall preserve in their new character of States the limits which they have had as Territories of the Federation.

ART. 46. The State of the Valley of Mexico shall be formed of the territory actually composing the Federal

District, but the erection into a State shall only have effect when the supreme Federal authorities are removed to another place.

ART. 47. The State of Nuevo Leon and Coahuila shall comprise the territory which has belonged to the two distinct States of which it is now formed, except the part of the hacienda of Bonanza, which shall be reincorporated in Zacatecas, on the same terms in which it was before its incorporation in Coahuila.

ART. 48. The States of Guanajuato, Jalisco, Michoacan, Oajaca, San Luis Potosí, Tabasco, Vera Cruz, Yucatan, and Zacatecas shall recover the extension and limits which they had on the 31st of December, 1852, with the alterations the following Article establishes.

ART. 49. The town of Contepec, which has belonged to Guanajuato, shall be incorporated in Michoacan. The municipality of Ahualulco, which has belonged to Zacatecas, shall be incorporated in San Luis Potosí. The municipalities of Ojo-Caliente and San Francisco de los Adames, which have belonged to San Luis, as well as the towns of Nueva Tlascala and San Andres del Teul, which have belonged to Jalisco, shall be incorporated in Zacatecas. The department of Tuxpan shall continue to form a part of Vera Cruz. The canton of Huimanguillo, which has belonged to Vera Cruz, shall be incorporated in Tabasco.[1]

[1] Besides the twenty-four States which are mentioned in this section there have been created subsequently, according to executive decrees issued in accordance with the Constitution, the four following:

XXV. That of Campeche, separated from Yucatan.

XXVI. That of Coahuila, separated from Nuevo Leon.

XXVII. That of Hidalgo, in territory of the ancient State of Mexico, which formed the second military district.

XXVIII. That of Morelos, in territory also of the ancient State of Mexico, which formed the third military district.

TITLE III.

OF THE DIVISION OF POWERS.

ART. 50. The supreme power of the Federation is divided for its exercise into legislative, executive, and judicial. Two or more of these powers shall never be united in one person or corporation, nor the legislative power be deposited in one individual.

SECTION I. OF THE LEGISLATIVE POWER.

ART. 51. The legislative power of the nation is deposited in a general Congress, which shall be divided into two houses, one of Deputies and the other of Senators.[1]

Paragraph I. Of the Election and Installation of Congress.

ART. 52. The House of Deputies shall be composed of representatives of the nation, elected in their entire number every two years by Mexican citizens.

ART. 53. One deputy shall be elected for each forty thousand inhabitants, or for a fraction which exceeds twenty thousand. The territory in which the population is less than that determined in this article shall, nevertheless, elect one deputy.

ART. 54. For each deputy there shall be elected one alternate.

ART. 55. The election for deputies shall be indirect in the first degree, and by secret ballot, in the manner which the law shall prescribe.

ART. 56. In order to be eligible to the position of a deputy it is required that the candidate be a Mexican citizen in the enjoyment of his rights; that he be fully twenty-five years

[1] The original form of this article was as follows: "The exercise of the supreme legislative power is vested in one assembly, which shall be denominated Congress of the Union."

of age on the day of the opening of the session; that he be a resident of the State or Territory which makes the election, and that he be not an ecclesiastic. Residence is not lost by absence in the discharge of any public trust bestowed by popular election.

ART. 57. The positions of Deputy and of Senator are incompatible with any Federal commission or office whatsoever for which a salary is received.

ART. 58. The Deputies and the Senators, from the day of their election to the day on which their trust is concluded, may not accept any commission or office offered by the Federal Executive, for which a salary is received, except with the previous license of the respective house. The same requisites are necessary for the alternates of Deputies and Senators when in the exercise of their functions.

A. The Senate is composed of two Senators for each State and two for the Federal District. The election of Senators shall be indirect in the first degree. The Legislature of each State shall declare elected the person who shall have obtained the absolute majority of the votes cast, or shall elect from among those who shall have obtained the relative majority in the manner which the electoral law shall prescribe. For each Senator there shall be elected an alternate.

B. The Senate shall be renewed one-half every two years. The Senators named in the second place shall go out at the end of the first two years, and thereafter the half who have held longer.

C. The same qualifications are required for a Senator as for a Deputy, except that of age, which must be at least thirty years on the day of the opening of the session.

ART. 59. The Deputies and Senators are privileged from arrest for their opinions manifested in the performance of their duties, and shall never be liable to be called to account for them.

ART. 60. Each house shall judge of the election of its

members, and shall solve the doubts which may arise regarding them.

ART. 61. The houses may not open their sessions nor perform their functions without the presence in the Senate of at least two-thirds, and in the House of Deputies of more than one-half of the whole number of their members, but those present of one or the other body must meet on the day indicated by the law and compel the attendance of absent members under penalties which the law shall designate.

ART. 62. The Congress shall have each year two periods of ordinary sessions: the first, which may be prorogued for thirty days, shall begin on the 16th of September and end on the 15th of December, and the second, which may be prorogued for fifteen days, shall begin the 1st of April and end the last day of May.

ART. 63. At the opening of the sessions of the Congress the President of the Union shall be present and shall pronounce a discourse in which he shall set forth the state of the country. The President of the Congress shall reply in general terms.

ART. 64. Every resolution of the Congress shall have the character of a law or decree. The laws and decrees shall be communicated to the Executive, signed by the Presidents of both houses and by a Secretary of each of them, and shall be promulgated in this form: "The Congress of the United States of Mexico decrees:" (*Text of the law or decree.*)

Paragraph II. Of the Initiative and Formation of the Laws.

ART. 65. The right to initiate laws or decrees belongs:

I. To the President of the Union.

II. To the Deputies and Senators of the general Congress.

III. To the Legislatures of the States.

ART. 66. Bills presented by the President of the Repub-

lic, by the Legislatures of the States, or by deputations from the same, shall pass immediately to a committee. Those which the Deputies or the Senators may present shall be subjected to the procedure which the rules of debate may prescribe.

ART. 67. Every bill which shall be rejected in the house where it originated, before passing to the other house, shall not again be presented during the sessions of that year.

ART. 68. The second period of sessions shall be destined, in all preference, to the examination of and action upon the estimates of the following fiscal year, to passing the necessary appropriations to cover the same, and to the examination of the accounts of the past year, which the Executive shall present.

ART. 69. The last day but one of the first period of sessions the Executive shall present to the House of Deputies the bill of appropriations for the next year following and the accounts of the preceding year. Both shall pass to a committee of five Representatives appointed on the same day, which shall be under obligation to examine said documents, and present a report on them at the second session of the second period.

ART. 70. The formation of the laws and of the decrees may begin indiscriminately in either of the two houses, with the exception of bills which treat of loans, taxes, or imposts, or of the recruiting of troops, all of which must be discussed first in the House of Deputies.

ART. 71. Every bill, the consideration of which does not belong exclusively to one of the houses, shall be discussed successively in both, the rules of debate being observed with reference to the form, the intervals, and manner of proceeding in discussions and voting.

A. A bill having been approved in the house where it originated, shall pass for its discussion to the other house. If the latter body should approve it, it will be

remitted to the Executive, who, if he shall have no observations to make, shall publish it immediately.

B. Every bill shall be considered as approved by the Executive if not returned with observations to the house where it originated within ten working days, unless during this term Congress shall have closed or suspended its sessions, in which case the return must be made the first working day on which it shall meet.

C. A bill rejected wholly or in part by the Executive must be returned with his observations to the house where it originated. It shall be discussed again by this body, and if it should be confirmed by an absolute majority of votes, it shall pass again to the other house. If by this house it should be sanctioned with the same majority, the bill shall be a law or decree, and shall be returned to the Executive for promulgation. The voting on the law or decree shall be by name.

D. If any bill should be rejected wholly in the house in which it did not originate, it shall be returned to that in which it originated with the observations which the former shall have made upon it. If having been examined anew it should be approved by the absolute majority of the members present, it shall be returned to the house which rejected it, which shall again take it into consideration, and if it should approve it by the same majority it shall pass to the Executive, to be treated in accordance with division A; but, if it should reject it, it shall not be presented again until the following sessions.

E. If a bill should be rejected only in part, or modified, or receive additions by the house of revision, the new discussion in the house where it originated shall treat only of the rejected part, or of the amendments or additions, without being able to alter in any manner the articles approved. If the additions or amendments made by the house of revision should be approved by the absolute majority of the votes present in the house where it originated, the whole bill shall be passed to the Executive, to

be treated in accordance with division A. But if the additions or amendments made by the house of revision should be rejected by the majority of the votes in the house where it originated, they shall be returned to the former, in order that the reasons of the latter may be taken into consideration; and if by the absolute majority of the votes present said additions or amendments shall be rejected in this second revision, the bill, in so far as it has been approved by both houses, shall be passed to the Executive, to be treated in accordance with division A; but if the house of revision should insist, by the absolute majority of the votes present, on said additions or amendments, the whole bill shall not be again presented until the following sessions, unless both houses agree by the absolute majority of their members present that the law or decree shall be issued solely with the articles approved, and that the parts added or amended shall be reserved to be examined and voted in the following sessions.

F. In the interpretation, amendment, or repeal of the laws or decrees, the rules established for their formation shall be observed.

G. Both houses shall reside in the same place, and they shall not remove to another without first agreeing to the removal and on the time and manner of making it, designating the same point for the meeting of both. But if both houses, agreeing to the removal, should differ as to time, manner, or place, the Executive shall terminate the difference by choosing one of the places in question. Neither house shall suspend its sessions for more than three days without the consent of the other.

H. When the general Congress meets in extra sessions, it shall occupy itself exclusively with the object or objects designated in the summons; and if the special business shall not have been completed on the day on which the regular session should open, the extra sessions shall be closed nevertheless, leaving the points pending to be treated of in the regular sessions.

The Executive of the Union shall not make observations on the resolutions of the Congress when this body prorogues its sessions or exercises functions of an electoral body or a jury.

Paragraph III. Of the Powers of the General Congress.

ART. 72. The Congress has power—

I. To admit new States or Territories into the Federal Union, incorporating them in the nation.

II. To erect Territories into States when they shall have a population of eighty thousand inhabitants and the necessary elements to provide for their political existence.

III. To form new States within the limits of those existing, it being necessary to this end—

1. That the fraction or fractions which ask to be erected into a State shall number a population of at least one hundred and twenty thousand inhabitants.

2. That it shall be proved before Congress that they have elements sufficient to provide for their political existence.

3. That the Legislatures of the States, the territories of which are in question, shall have been heard on the expediency or inexpediency of the establishment of the new State, and they shall be obliged to make their report within six months, counted from the day on which the communication relating to it shall have been remitted to them.

4. That the Executive of the Federation shall likewise be heard, who shall send his report within seven days, counted from the date on which he shall have been asked for it.

5. That the establishment of the new State shall have been voted for by two-thirds of the Deputies and Senators present in their respective houses.

6. That the resolution of Congress shall have been ratified by the majority of the Legislatures of the States,

after examining a copy of the proceedings; provided that the Legislatures of the States whose territory is in question shall have given their consent.

7. If the Legislatures of the States whose territory is in question shall not have given their consent, the ratification mentioned in the preceding clause must be made by two-thirds of the Legislatures of the other States.

A. The exclusive powers of the House of Deputies are—

I. To constitute itself an Electoral College in order to exercise the powers which the law may assign to it, in respect to the election of the Constitutional President of the Republic, Magistrates of the Supreme Court, and Senators for the Federal District.

II. To judge and decide upon the resignations which the President of the Republic or the Magistrates of the Supreme Court of Justice may make. The same power belongs to it in treating of licenses solicited by the first.

III. To watch over, by means of an inspecting committee from its own body, the exact performance of the business of the chief auditorship.

IV. To appoint the principal officers and other employés of the same.

V. To constitute itself a jury of accusation, for the high functionaries of whom Article 103 of this Constitution treats.

VI. To examine the accounts which the Executive must present annually, to approve the annual estimate of expenses, and to initiate the taxes which in its judgment ought to be decreed to cover these expenses.

B. The exclusive powers of the Senate are—

I. To approve the treaties and diplomatic conventions which the Executive may make with foreign powers.

II. To ratify the appointments which the President of the Republic may make of ministers, diplomatic agents, consuls-general, superior employés of the Treasury, col-

onels and other superior officers of the national army and navy, on the terms which the law shall provide.

III. To authorize the Executive to permit the departure of national troops beyond the limits of the Republic, the passage of foreign troops through the national territory, the station of squadrons of other powers for more than a month in the waters of the Republic.

IV. To give its consent in order that the Executive may dispose of the national guard outside of their respective States or Territories, determining the necessary force.

V. To declare, when the Constitutional legislative and executive powers of a State shall have disappeared, that the case has arrived for appointing to it a provisional Governor, who shall call elections in conformity with the Constitutional laws of the said State. The appointment of Governor shall be made by the Federal Executive with the approval of the Senate, and in its recesses with the approval of the Permanent Commission. Said functionary shall not be elected Constitutional Governor at the elections which are had in virtue of the summons which he shall issue.

VI. To decide political questions which may arise between the powers of a State, when any of them may appear with this purpose in the Senate, or when on account of said questions Constitutional order shall have been interrupted during a conflict of arms. In this case the Senate shall dictate its resolution, being subject to the general Constitution of the Republic and to that of the State.

The law shall regulate the exercise of this power and that of the preceding.

VII. To constitute itself a jury of judgment in accordance with Article 105 of this Constitution.

C. Each of the houses may, without the intervention of the other—

I. Dictate economic resolutions relative to its internal regimen.

II. Communicate within itself, and with the Executive of the Union, by means of committees from its own body.

III. Appoint the employés of its secretaryship, and make the internal regulations for the same.

IV. Issue summons for extraordinary elections, with the object of filling the vacancies of their respective members.

IV. To regulate definitely the limits of the States, terminating the differences which may arise between them relative to the demarcation of their respective territories, except when these difficulties have a contentious character.

V. To change the residence of the supreme powers of the Federation.

VI. To establish the internal order of the Federal District and Territories, taking as a basis that the citizens shall choose by popular election the political, municipal, and judicial authorities, and designating the taxes necessary to cover their local expenditure.

VII. To approve the estimates of the Federal expenditure, which the Executive must annually present to it, and to impose the necessary taxes to cover them.

VIII. To give rules under which the Executive may make loans on the credit of the nation; to approve said loans, and to recognize and order the payment of the national debt.

IX. To establish tariffs on foreign commerce, and to prevent, by means of general laws, onerous restrictions from being established with reference to the commerce between the States.

X. To issue codes, obligatory throughout the Republic, of mines and commerce, comprehending in this last banking institutions.

XI. To create and suppress public Federal employments and to establish, augment, or diminish their salaries.

XII. To ratify the appointments which the Executive may make of ministers, diplomatic agents, and consuls, of

the higher employés of the Treasury, of the colonels and other superior officers of the national army and navy.

XIII. To approve the treaties, contracts, or diplomatic conventions which the Executive may make.

XIV. To declare war in view of the data which the Executive may present to it.

XV. To regulate the manner in which letters of marque may be issued; to dictate laws according to which must be declared good or bad the prizes on sea and land, and to issue laws relating to maritime rights in peace and war.

XVI. To permit or deny the entrance of foreign troops into the territory of the Republic, and to consent to the station of squadrons of other powers for more than a month in the waters of the Republic.

XVII. To permit the departure of national troops beyond the limits of the Republic.[1]

XVIII. To raise and maintain the army and navy of the Union, and to regulate their organization and service.

XIX. To establish regulations with the purpose of organizing, arming, and disciplining the national guard, reserving respectively to the citizens who compose it the appointment of the commanders and officers, and to the States the power of instructing it in conformity with the discipline prescribed by said regulations.

XX. To give its consent in order that the Executive may control the national guard outside of its respective States and Territories, determining the necessary force.

XXI. To dictate laws on naturalization, colonization, and citizenship.

XXII. To dictate laws on the general means of communication and on the post-office and mails.

XXIII. To establish mints, fixing the conditions of their operation, to determine the value of foreign money, and adopt a general system of weights and measures.

[1] Amended by Section B, Clause III., Article 72, of the law of the 13th of November, 1874. See p. 30.

XXIV. To fix rules to which must be subject the occupation and sale of public lands and the price of these lands.

XXV. To grant pardons for crimes cognizable by the tribunals of the Federation.

XXVI. To grant rewards or recompense for eminent services rendered to the country or humanity.

XXVII. To prorogue for thirty working days the first period of its ordinary sessions.

XXVIII. To form rules for its internal regulation, to take the necessary measures to compel the attendance of absent members, and to correct the faults or omissions of those present.

XXIX. To appoint and remove freely the employés of its secretaryship and those of the chief auditorship, which shall be organized in accordance with the provisions of the law.

XXX. To make all laws which may be necessary and proper to render effective the foregoing powers and all others granted by this Constitution and the authorities of the Union.[1]

Paragraph IV. Of the Permanent Deputation.

ART. 73. During the recesses of Congress there shall be a Permanent Deputation composed of twenty-nine members, of whom fifteen shall be Deputies and fourteen Senators, appointed by their respective houses the evening before the close of the sessions.

ART. 74. The attributes of the Permanent Deputation are—

I. To give its consent to the use of the national guard in the cases mentioned in Article 72, Clause XX.

II. To determine by itself, or on the proposal of the Executive, after hearing him in the first place, the sum-

[1] See respecting this Article the additions A, B, and C to Article 72, of the law of the 13th of November, already cited.

mons of Congress, or of one house alone, for extra sessions, the vote of two-thirds of the members present being necessary in both cases. The summons shall designate the object or objects of the extra sessions.

III. To approve the appointments which are referred to in Article 85, Clause III.

IV. To administer the oath of office to the President of the Republic, and to the Justices of the Supreme Court, in the cases provided by this Constitution.[1]

V. To report upon all the business not disposed of, in order that the Legislature which follows may immediately take up such unfinished business.

SECTION II. OF THE EXECUTIVE POWER.

ART. 75. The exercise of the supreme executive power of the Union is vested in a single individual, who shall be called "President of the United States of Mexico."

ART. 76. The election of President shall be indirect in the first degree, and by secret ballot, in such manner as may be prescribed by the electoral law.

ART. 77. To be eligible to the position of President, the candidate must be a Mexican citizen by birth, in the exercise of his rights, be fully thirty-five years old at the time of the election, not belong to the ecclesiastical order, and reside in the country at the time the election is held.

ART. 78. The President shall enter upon the performance of the duties of his office on the first of December, and shall continue in office four years, being eligible for the Constitutional period immediately following; but he shall remain incapable thereafter to occupy the presidency by a new election until four years shall have passed, counted from the day on which he ceased to perform his functions.

ART. 79. In the temporary default of the President of

[1] See the Amendment of September 25, 1873, Art. 4.

the Republic, and in the vacancy before the installation of the newly-elected President, the citizen who may have performed the duties of President or Vice-President of the Senate, or of the Permanent Commission in the periods of recess, during the month prior to that in which said default may have occurred, shall enter upon the exercise of the executive power of the Union.

A. The President and Vice-President of the Senate and of the Permanent Commission shall not be reëlected to those offices until a year after having held them.

B. If the period of sessions of the Senate or of the Permanent Commission shall begin in the second half of a month, the default of the President of the Republic shall be covered by the President or Vice-President who may have acted in the Senate or in the Permanent Commission during the first half of the said month.

C. The Senate and the Permanent Commission shall renew, the last day of each month, their Presidents and Vice-Presidents. For these offices the Permanent Commission shall elect, alternatively, in one month two Deputies and in the following month two Senators.

D. When the office of President of the Republic is vacant, the functionary who shall take it constitutionally as his substitute must issue, within the definite term of fifteen days, the summons to proceed to a new election, which shall be held within the term of three months, and in accordance with the provisions of Article 76 of this Constitution. The provisional President shall not be eligible to the presidency at the elections which are held to put an end to his provisional term.

E. If, on account of death or any other reason, the functionaries who, according to this law, should take the place of the President of the Republic might not be able in any absolute manner to do so, it shall be taken, under predetermined conditions, by the citizen who may have been President or Vice-President of the Senate or the Perma-

nent Commission in the month prior to that in which they discharged those offices.

F. When the office of President of the Republic shall become vacant within the last six months of the constitutional period, the functionary who shall take the place of the President shall terminate this period.

G. To be eligible to the position of President or Vice-President of the Senate or of the Permanent Commission, one must be a Mexican citizen by birth.

H. If the vacancy in the office of President of the Republic should occur when the Senate and Permanent Commission are performing their functions in extra sessions, the President of the Commission shall fill the vacancy, under conditions indicated in this article.

I. The Vice-President of the Senate or of the Permanent Commission shall enter upon the performance of the functions which this Article confers upon them, in the vacancies of the office of President of the Senate or of the Permanent Commission, and in the periods only while the impediment lasts.

J. The newly-elected President shall enter upon the discharge of his duties, at the latest, sixty days after that of the election. In case the House of Deputies shall not be in session, it shall be convened in extra session, in order to make the computation of votes within the term mentioned.

ART. 80. In the vacancy of the office of President, the period of the newly-elected President shall be computed from the first of December of the year prior to that of his election, provided he may not have taken possession of his office on the date which Article 78 determines.

ART. 81. The office of President of the Union may not be resigned, except for grave cause, approved by Congress, before whom the resignation shall be presented.

ART. 82. If for any reason the election of President shall not have been made and published by the first of December, on which the transfer of the office should be made, or the President-elect shall not have been ready to enter upon the

discharge of his duties, the term of the former President shall end nevertheless, and the supreme executive power shall be deposited provisionally in the functionary to whom it belongs according to the provisions of the reformed Article 79 of this Constitution.

ART. 83. The President, on taking possession of his office, shall take an oath before Congress, and in its recess before the Permanent Commission, under the following formula: "I swear to perform loyally and patriotically the duties of President of the United States of Mexico, according to the Constitution, and seek in everything for the welfare and prosperity of the Union."[1]

ART. 84. The President may not remove from the place of the residence of the Federal powers, nor lay aside the exercise of his functions, without grave cause, approved by the Congress, and in its recesses by the Permanent Commission.

ART. 85. The powers and obligations of the President are the following:

I. To promulgate and execute the laws passed by the Congress of the Union, providing, in the administrative sphere, for their exact observance.

II. To appoint and remove freely the Secretaries of the Cabinet, to remove the diplomatic agents and superior employés of the Treasury, and to appoint and remove freely the other employés of the Union whose appointment and removal are not otherwise provided for in the Constitution or in the laws.

III. To appoint ministers, diplomatic agents, consuls-general, with the approval of Congress, and, in its recess, of the Permanent Commission.

IV. To appoint, with the approval of Congress, the colonels and other superior officers of the national army and navy, and the superior employés of the treasury.

V. To appoint the other officers of the national army and navy, according to the laws.

[1] See the Amendments and Additions of September 25, 1873.

VI. To control the permanent armed force by sea and land for the internal security and external defence of the Federation.

VII. To control the national guard for the same objects within the limits established by Article 72, Clause XX.

VIII. To declare war in the name of the United States of Mexico, after the passage of the necessary law by the Congress of the Union.

IX. To grant letters of marque, subject to bases fixed by the Congress.

X. To direct diplomatic negotiations and to make treaties with foreign powers, submitting them for the ratification of the Federal Congress.

XI. To receive ministers and other envoys from foreign powers.

XII. To convoke Congress in extra sessions when the Permanent Commission shall consent to it.

XIII. To furnish the judicial power with that assistance which may be necessary for the prompt exercise of its functions.

XIV. To open all classes of ports, to establish maritime and frontier custom-houses and designate their situation.

XV. To grant, in accordance with the laws, pardons to criminals sentenced for crimes within the jurisdiction of the Federal tribunals.

XVI. To grant exclusive privileges, for a limited time and according to the proper law, to discoverers, inventors, or perfecters of any branch of industry.

ART. 86. For the dispatch of the business of the administrative department of the Federation there shall be the number of Secretaries which the Congress may establish by a law, which shall provide for the distribution of business and prescribe what shall be in charge of each Secretary.

ART. 87. To be a Secretary of the Cabinet it is required that one shall be a Mexican citizen by birth, in the exercise of his rights, and fully twenty-five years old.

ART. 88. All the regulations, decrees, and orders of the President must be signed by the Secretary of the Cabinet who is in charge of the department to which the subject belongs. Without this requisite they shall not be obeyed.

ART. 89. The Secretaries of the Cabinet, as soon as the sessions of the first period shall be opened, shall render an account to the Congress of the state of their respective departments.

SECTION III. OF THE JUDICIAL POWER.

ART. 90. The exercise of the judicial power of the Federation is vested in a Supreme Court of Justice, and in the district and circuit courts.

ART. 91. The Supreme Court of Justice shall be composed of eleven judges, four supernumeraries, one fiscal, and one attorney-general.

ART. 92. Each of the members of the Supreme Court of Justice shall remain in office six years, and his election shall be indirect in the first degree, under conditions established by the electoral law.

ART. 93. In order to be elected a member of the Supreme Court of Justice it is necessary that one be learned in the science of the law in the judgment of the electors, more than thirty-five years old, and a Mexican citizen by birth, in the exercise of his rights.

ART. 94. The members of the Supreme Court of Justice, on entering upon the exercise of their charge, shall take an oath before Congress, and, in its recesses, before the Permanent Commission, in the following form: "Do you swear to perform loyally and patriotically the charge of Magistrate of the Supreme Court of Justice, which the people have conferred upon you in conformity with the Constitution, seeking in everything the welfare and prosperity of the Union?"[1]

ART. 95. A member of the Supreme Court of Justice

[1] See Additions to the Constitution, September 25, 1873.

may resign his office only for grave cause, approved by the Congress, to whom the resignation shall be presented. In the recesses of the Congress the judgment shall be rendered by the Permanent Commission.

ART. 96. The law shall establish and organize the circuit and district courts.

ART. 97. It belongs to the Federal tribunals to take cognizance of—

I. All controversies which may arise in regard to the fulfilment and application of the Federal laws, except in the case in which the application affects only private interests; such a case falls within the competence of the local judges and tribunals of the common order of the States, of the Federal District, and of the Territory of Lower California.

II. All cases pertaining to maritime law.

III. Those in which the Federation may be a party.

IV. Those that may arise between two or more States.

V. Those that may arise between a State and one or more citizens of another State.

VI. Civil or criminal cases that may arise under treaties with foreign powers.

VII. Cases concerning diplomatic agents and consuls.

ART. 98. It belongs to the Supreme Court of Justice, in the first instance, to take cognizance of controversies which may arise between one State and another, and of those in which the Union may be a party.

ART. 99. It belongs also to the Supreme Court of Justice to determine the questions of jurisdiction which may arise between the Federal tribunals, between these and those of the States, or between the courts of one State and those of another.

ART. 100. In the other cases comprehended in Article 97, the Supreme Court of Justice shall be a court of appeal or, rather, of last resort, according to the graduation which the law may make in the jurisdiction of the circuit and district courts.

ART. 101. The tribunals of the Federation shall decide all questions which arise—

I. Under laws or acts of whatever authority which violate individual guarantees.

II. Under laws or acts of the Federal authority which violate or restrain the sovereignty of the States.

III. Under laws or acts of the State authorities which invade the sphere of the Federal authority.

ART. 102. All the judgments which the preceding article mentions shall be had on petition of the aggrieved party, by means of judicial proceedings and forms which shall be prescribed by law. The sentence shall be always such as to affect private individuals only, limiting itself to defend and protect them in the special case to which the process refers, without making any general declaration respecting the law or act which gave rise to it.

TITLE IV.

OF THE RESPONSIBILITY OF THE PUBLIC FUNCTIONARIES.

ART. 103. The Senators, the Deputies, the members of the Supreme Court of Justice, and the Secretaries of the Cabinet are responsible for the common crimes which they may commit during their terms of office, and for the crimes, misdemeanors, and negligence into which they may fall in the performance of the duties of said office. The Governors of the States are likewise responsible for the infraction of the Constitution and Federal laws. The President of the Republic is also responsible; but during the term of his office he may be accused only for the crimes of treason against the country, express violation of the Constitution, attack on the freedom of election, and grave crimes of the common order. The high functionaries of the Federation shall not enjoy any Constitutional privilege for the official crimes, misdemeanors, or negligence into which they may fall in the performance of

any employment, office, or public commission which they may have accepted during the period for which, in conformity with the law, they shall have been elected. The same shall happen with respect to those common crimes which they may commit during the performance of said employment, office, or commission. In order that the cause may be initiated when the high functionary shall have returned to the exercise of his proper functions, proceeding should be undertaken in accordance with the provision of Article 104 of this Constitution.

ART. 104. If the crime should be a common one, the House of Representatives, formed into a grand jury, shall declare, by an absolute majority of votes, whether there is or is not ground to proceed against the accused. In the negative case, there shall be no ground for further proceeding; in the affirmative, the accused shall be, by the said act, deprived of his office, and subjected to the action of the ordinary tribunals.

ART. 105. The houses shall take cognizance of official crimes, the House of Deputies as a jury of accusation, the Senators as a jury of judgment.

The jury of accusation shall have for its object to declare, by an absolute majority of votes, whether the accused is or is not culpable. If the declaration should be absolutory, the functionary shall continue in the exercise of his office; if it should be condemnatory, he shall be immediately deprived of his office, and shall be placed at the disposal of the Senate. The latter, formed into a jury of judgment, and, with the presence of the criminal and of the accuser, if there should be one, shall proceed to apply, by an absolute majority of votes, the punishment which the law designates.

ART. 106. A judgment of responsibility for official crimes having been pronounced, no favor of pardon may be extended to the offender.

ART. 107. The responsibility for official crimes and misdemeanors may be required only during the period in

which the functionary remains in office, and one year thereafter.

ART. 108. With respect to demands of the civil order, there shall be no privilege or immunity for any public functionary.

TITLE V.

OF THE STATES OF THE FEDERATION.

ART. 109. The States shall adopt for their internal regimen the popular, representative, republican form of government, and may provide in their respective Constitutions for the reëlection of the Governors in accordance with what Article 78 provides for the President of the Republic.

ART. 110. The States may regulate among themselves, by friendly agreements, their respective boundaries; but those regulations shall not be carried into effect without the approval of the Congress of the Union.

ART. 111. The States may not in any case—

I. Form alliances, treaties, or coalitions with another State, or with foreign powers, excepting the coalition which the frontier States may make for offensive or defensive war against the Indians.

II. Grant letters of marque or reprisal.

III. Coin money, or emit paper money or stamped paper.

ART. 112. Neither may any State, without the consent of the Congress of the Union:

I. Establish tonnage duties, or any port duty, or impose taxes or duties upon importations or exportations.

II. Have at any time permanent troops or vessels of war.

III. Make war by itself on any foreign power, except in cases of invasion or of such imminent peril as to admit of no delay. In these cases the State shall give notice immediately to the President of the Republic.

ART. 113. Each State is under obligation to deliver without delay the criminals of other States to the authority that claims them.

ART. 114. The Governors of the States are obliged to publish and cause to be obeyed the Federal laws.

ART. 115. In each State of the Federation entire faith and credit shall be given to the public acts, records, and judicial proceedings of all the other States. The Congress may, by means of general laws, prescribe the manner of proving said acts, records, and proceedings, and the effect thereof.

ART. 116. The powers of the Union are bound to protect the States against all invasion or external violence. In case of insurrection or internal disturbance they shall give them like protection, provided the Legislature of the State, or the Executive, if the Legislature is not in session, shall request it.

TITLE VI.

GENERAL PROVISIONS.

ART. 117. The powers which are not expressly granted by this Constitution to the Federal authorities are understood to be reserved to the States.

ART. 118. No person may at the same time hold two Federal elective offices; but if elected to two, he may choose which of them he will fill.

ART. 119. No payment shall be made which is not comprehended in the budget or determined by a subsequent law.

ART. 120. The President of the Republic, the members of the Supreme Court of Justice, the Deputies, and other public officers of the Federation, who are chosen by popular election, shall receive a compensation for their services, which shall be determined by law and paid by the Federal Treasury. This compensation may not be renounced, and any law which augments or diminishes it shall not have

effect during the period for which a functionary holds the office.

ART. 121. Every public officer, without any exception, before taking possession of his office, shall take an oath to maintain this Constitution and the laws which emanate from it.[1]

ART. 122. In time of peace no military authority may exercise more functions than those which have close connection with military discipline. There shall be fixed and permanent military commands only in the castles, fortresses, and magazines which are immediately under the government of the Union; or in encampments, barracks, or depots which may be established outside of towns for stationing troops.

ART. 123. It belongs exclusively to the Federal authorities to exercise, in matters of religious worship and external discipline, the intervention which the laws may designate.

ART. 124. The States shall not impose any duty for the simple passage of goods in the internal commerce. The Government of the Union alone may decree transit duties, but only with respect to foreign goods which cross the country by international or interoceanic lines, without being on the national territory more time than is necessary to traverse it and depart to the foreign country.

They shall not prohibit, either directly or indirectly, the entrance to their territory, or the departure from it, of any merchandise, except on police grounds; nor burden the articles of national production on their departure for a foreign country or for another State.

The exemptions from duties which they concede shall be general; they may not be decreed in favor of the products of specified origin.

The quota of the import for a given amount of merchandise shall be the same, whatever may have been its origin,

[1] See the Additions of September 25, 1873.

and no heavier burden may be assigned to it than that which the similar products of the political entity in which the import is decreed bear.

The national merchandise shall not be submitted to definite route nor to inspection or registry on the ways, nor any fiscal document be demanded for its internal circulation.

Nor shall they burden foreign merchandise with a greater quota than that which may have been permitted them by the Federal law to receive.

ART. 125. The forts, military quarters, magazines, and other edifices necessary to the government of the Union shall be under the immediate inspection of the Federal authorities.

ART. 126. This Constitution, the laws of the Congress of the Union which emanate from it, and all the treaties made or which shall be made by the President of the Republic, with the approval of Congress, shall be the supreme law of the whole Union. The judges of each State shall be guided by said Constitution, law, and treaties in spite of provisions to the contrary which may appear in the Constitutions or laws of the States.

TITLE VII.

OF THE REFORM OF THE CONSTITUTION.

ART. 127. The present Constitution may be added to or reformed. In order that additions or alterations may become part of the Constitution, it is required that the Congress of the Union, by a vote of two-thirds of the members present, shall agree to the alterations or additions, and that these shall be approved by the majority of the Legislatures of the States. The Congress of the Union shall count the votes of the Legislatures and make the declaration that the reforms or additions have been approved.

TITLE VIII.

OF THE INVIOLABILITY OF THE CONSTITUTION.

ART. 128. This Constitution shall not lose its force and vigor even if its observance be interrupted by a rebellion. In case that by any public disturbance a government contrary to the principles which it sanctions shall be established, as soon as the people recover their liberty its observance shall be reëstablished, and in accordance with it and the laws which shall have been issued in virtue of it, shall be judged not only those who shall have figured in the government emanating from the rebellion, but also those who shall have coöperated with it.

ADDITIONS TO THE CONSTITUTION.

ART. 1. The State and the Church are independent of one another. The Congress may not pass laws establishing or prohibiting any religion.

ART. 2. Marriage is a civil contract. This and the other acts relating to the civil state of persons belong to the exclusive jurisdiction of the functionaries and authorities of the civil order, within limits provided by the laws, and they shall have the force and validity which the same attribute to them.

ART. 3. No religious institution may acquire real estate or capital fixed upon it, with the single exception established in Article 27 of this Constitution.

ART. 4. The simple promise to speak the truth and to comply with the obligations which have been incurred, shall be substituted for the religious oath, with its effects and penalties.

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LAND TRANSFER REFORM.

It seems extremely desirable that attention should be called more commonly than has been the case in our country to the great importance of the subject of land transfer, and to the desirability of a reform in our methods of making such transfer. No person has had occasion to sell a piece of land, large or small, or to borrow money on a mortgage, in any of our States, even including the newer ones, without being impressed with the difficulty and expense attending our system; no one has attempted to purchase, without being impressed with its uncertainty. A short article printed some years ago in the *New York Herald*, and since then frequently quoted in illustration, may be repeated here to illustrate again the expense always and inevitably attendant upon our system:

"Lately the Jumel property was cut up into 1383 pieces or parcels of real estate, and sold at partition sale. There appear to have been about three hundred purchasers at that sale, and no doubt each buyer, before he paid his money, carefully employed a good lawyer to examine the title to the lot or plot that he had bought, so that three hundred lawyers, each of them carefully examined and went through the same work, viz: the old deeds and mortgages and records affecting the whole property (for, as it had never been cut up before, each had to examine the title of the whole, no matter how small his parcel), and each of them searched the same volumes of long lists of names, and picked out from the 3500 volumes of deeds and mortgages in the New York Registrar's office the same big, dusty volumes of writing, and lifted them down and looked them through—in all 300 times, the very same labor.

"Evidently, 299 times that labor was thrown away—done over and over again uselessly. And the clients, those buyers, together paid 300 fees to those lawyers (who each earned his money), but evidently 299 of those fees were for repetitions of the very same work.

"By and by, twenty years from now, instead of only 300 owners of those Jumel plots, the whole 1383 will be sold and built upon, and 1383 new purchasers will again pay 1383 lawyers 1383 fees for examining that same Jumel title; only the fees will be larger, for there will, by that time (at the present rate of growth, and unless a remedy is soon applied), be fully 10,000 big folio volumes in the new Hall of Records, which the Legislature has just authorized to be built in the city, and the whole 1383 fees will be for mere repetitions of labor, so far as the whole Jumel estate title is concerned, and will be practically wasted.

"Not only that, but to-day, in examining a title for a purchaser, his lawyer carefully puts in official searches. He makes a requisition on the Registrar for all deeds, conveyances, mortgages, and instruments in writing on record in his office affecting the parcel whose title he is examining, and, of course, the Registrar carefully returns on his search all the old deeds, etc., affecting the whole property—because they affect the parcel—and he charges and gets by law 5 cents for each year for each name searched against the deeds, and 5 cents per year per name for mortgages. Altogether, say $20 is paid by each purchaser to the Registrar for those searches, but as there were 300 purchasers, and they put in 300 searches, the Registrar gets 300 times $20 for the same work, and twenty years hence 1383 purchasers will pay the then Registrar 1383 times $20, or more, for a search showing those very same facts.

"This sort of thing is daily repeated, year in and year out, in this city, over the whole of its surface.

"And the same thing happens in regard to loans on bonds and mortgages. Every man who thus lends money

must have the title examined, and very properly so, and the borrower has to pay for it—the same old searches against the same old names—and pay the same old fees.

"The tax which the real estate of New York city thus annually pays, amounts to more than 1 per cent. of the real value of the property sold and mortgaged, and it is safe to say that at least one-half of this heavy burden is the result of useless repetition, of the want of a good system in responsible hands, and is thrown away."

The great expense connected with our system of land transfer is reason enough for seeking a better system, but even worse than the expense and inconvenience is the uncertainty. No person holding land that has been transferred a number of times, especially if some of the transfers date back fifty years or more, can be certain that his title is good. The records may show a clear title, but many things may affect it that do not appear of record. If, too, the transfers date back even ten years, it is difficult to find witnesses to answer necessary questions; if fifty years, usually it is impossible. We may feel confident regarding our titles, but we are still liable to lose our land, in spite of the favorable opinion of the best real estate lawyer. As the Minnesota Title Insurance and Trust Company well puts it: "Few men, even among dealers in real estate, appreciate the risks involved in titles, and still less realize that the prevailing fees of the examiner are an inadequate return for the skill and actual time required to see if each instrument is properly executed in all particulars; if duly acknowledged; if sufficiently witnessed; if the signature of a wife or a husband has been omitted; if the description is clerically exact; if a power of attorney has been recorded; if such power authorizes the special act performed; if the husband joins in the power given by a married woman; if there be errors in recording; if there be conflicting deeds; if foreclosure proceedings are defective in the publication notice or any other of the many requirements; if a plot specifies the State, or county, or

town, or section, or range—is signed by all parties, witnessed, certified to by surveyor, etc.; if there be life estates, dower, courtesy, trusts, covenants, void devises, easements, adverse possession, rights of way, sheriff's or tax sales, mechanics' liens, decrees in equity, judgments, necessary partitions or distributions, probate proceedings in general, letters testamentary, omissions of parties, posthumous or illegitimate children, minority of grantors, misnomer, defective wills, insolvency, judgments, or bankruptcy proceedings in the United States Courts, etc. Few, if any, of these particulars can be obtained from an abstract. In order to fully determine them a skilful attorney must carefully examine the record of each instrument in the change of title."[1]

If these statements are true, and no one questions them, a better system should certainly be sought. Why should not real estate be as readily transferred as government bonds or railroad stock? And if it can be as readily transferred, is it not true that the value of real estate will be greatly enhanced by adopting such a method of transfer?

The Torrens system of land transfer by registration of title is a system that really accomplishes, in a great measure at least, just this desired result. Notice that, in a word, the system differs from our own in this: We register a deed, and the deed conveys the title. In the Torrens system, the title is transferred by registration; the certificate given, a duplicate of the one preserved in the Registrar's office, is merely in law a certificate that a transfer has been made, and a minute of the nature of the transfer.

In the countries where this system has been adopted, there is no compulsion regarding the registration of land owned by private parties. If any land-owner wishes to place his property under this system, he makes formal application at the Land Transfer office, declaring the nature

[1] Mason: Pamphlet on Land Transfer.

of his title to the land in question, and depositing his deeds, abstracts of title, or other evidences of title. The evidences of title, together with officially certified survey or plan of the land, is then submitted to a barrister and conveyancer, "examiners of titles," who report to the Registrar or Recorder of Titles on the following points:[1] Whether the description of the parcel of land is definite and clear; whether the applicant is in undisputed possession; whether he appears in justice and equity entitled thereto; whether his evidence of title is sufficient to protect him in a suit against him for ejectment. If the applicant fails to satisfy the examiner on any one of these points, his application is at once rejected. If, however, the applicant, being in possession, is able to satisfy them reasonably on all these points, even though some technical flaw may appear in the title, advertisement of the application is made, and notices are given to any who may have an interest, that unless a caveat is filed within a certain time, the land will be registered in accordance with the application. If the caveat is filed, action is delayed until it is either withdrawn or set aside by action of the Court, "when the land is brought under the operation of this system by the issue of a certificate of title, vesting the estate indefeasibly in the applicant."

This certificate, a duplicate of which is retained in the office, sets forth in detail, though briefly, a description of the land, usually with a plan or reference to a map, and the exact nature of the holder's title, together with a memorandum of all mortgages, leases, or other encumbrances of whatever nature. The one paper is sufficient to show the exact title, and the government guarantee that this title is correct, renders all search for "claim" of title, as under our system, entirely superfluous.

[1] An Essay on the Transfer of Land by Registration, etc.: Sir Robert Torrens. Cassell & Co. (Cobden Club publications.) This pamphlet, besides a clear explanation of the system, gives forms of all the most common kinds of transfer, and other papers used in connection with the system.

This practice of granting an absolute, indefeasible title, guaranteed by the government, after due advertisement and service of notice, is still one that involves very little risk, though that risk is one of the chief objections urged by its opponents. Ireland has brought about one-sixth of her land, and the English colonies over 152,000 parcels under this system, with almost complete immunity from error. Still there is always danger of error and fraud in such registration and subsequent transfer, so that the governments deem it advisable to provide a fund to reimburse those injured by the act of the government in granting an indefeasible title. From one-tenth to one-fifth of one per cent. of the value of the land, levied when the land is first brought under the system and at subsequent transfers by descent or devise, is found to produce a sufficient guarantee fund.

If a person wishes to sell his land, he makes out a memorandum of transfer in a simple prescribed form; and this with his certificate is taken to the Registrar. The transfer is then entered upon the Registrar's book and upon the certificate, and the new owner has the indefeasible title, with the government guarantee. So, whenever a title is transferred, one folium of the Registrar is enough to show to whom the land belongs, and there is no expense for looking up the title, no worry or doubt regarding a cloud upon it. That is impossible.

If only a part of the land named in a certificate is to be transferred, the memorandum for transfer is given only for that part. The Registrar marks the original certificate and record "cancelled" as to that part, and a new certificate is issued to its purchaser, while the register gives it a new folium. Thus, every person holding an estate in land needs only one document to show the exact nature and extent of his ownership, and the one folium of the register shows the same facts, and always—this is worth repeating—his title is absolutely indefeasible, as shown by the record.

A mortgage or lease or other encumbrance is managed in an equally simple way. The mortgage or lease is executed in duplicate—one is given to the mortgagee or lessee, the other remains in the office. A memorandum of the encumbrance is then made upon the certificate, and upon the Registrar's book, and the work is complete. When the mortgage is paid or other encumbrance removed, a receipt is indorsed on the duplicate held by the mortgagee, and a minute of it made on the Registrar's book and on the certificate of title. Thus, in any case, the one folium of the register shows the exact condition of the title. A purchaser, too, may rely upon the record, for the government guarantees the title to be as shown on the register.

An equitable claim to land may be protected by lodging with the Registrar a caveat forbidding the registration of any dealing with the land until fourteen days, or other named period, shall have elapsed after notice of intention to register the same has been served by the Registrar at the address given. A red ink cross with the number of the caveat is then inscribed on the proper folium of the register. The notice gives every needed opportunity for protection to the holder of the equitable claim.

The most complicated forms of direct settlements and entails are managed about as readily as ordinary transfers, for in all cases all that is needed is a clear statement of the present facts on the certificate and register. Any change in the nature of the claim may be shown by a new certificate giving the new condition of affairs, and by a new folium in the register, or note on a former entry. In all transactions, present conditions, rights, and claims are shown on the one folium, and no one has any interest in going beyond that. The title, as shown, is indefeasible; the history of the title—all-important under our present system—is of no consequence whatever under the Torrens system.

The total expense under this system is, as will have been thought from the simplicity of the plan, much less than the

sums paid under the old system for abstracts and examination of titles—in old States not one-tenth as much—to say nothing of the certainty of the title and the saving of trouble. After the first entry, the cost of which would depend upon the old system, from $5 to $10 would suffice for the average transfer.

The system was invented by Robert Torrens,[1] of Adelaide, South Australia, an officer in the customs service, and not a lawyer, who from his experience in the registration of ships came to think of the application of the same plan to land. He drew up his plan, but the lawyers wisely shook their heads. It was so simple as to be almost if not quite ridiculous to gentlemen trained in the old school of fines and recoveries. He, however, persevered, and in 1858 South Australia passed a law adopting the system. An improvement upon this was passed in 1861, another one in 1878, and a perfected one in 1886. Since the first Act was passed in South Australia the system has been adopted in Tasmania, Victoria, New South Wales, Western Australia, New Zealand, and even in Fiji. In Vancouver Island it was introduced in 1861, and has since been introduced in British Columbia, Manitoba, and Ontario, Canada. In all cases it has been found to be in practice even more beneficial than was claimed by its advocates. Generally there has been no compulsion regarding the application of the system to individual titles, except in case of land bought from the government; but when the system has become known it is usual for purchasers to insist upon a Torrens title before buying. A usual effect of the system is to raise the value of all land brought under it.

In the United States but little has been done in the way of improving the methods of land transfer, though the evils of the present system are recognized by thoughtful men everywhere. In several of the States individuals

[1] A similar system has been in use in Hamburg, in Prussia, and in other parts of Europe for a long time; but the fact seems never to have been known to Torrens, to whom the plan was entirely new.

have taken an interest in the matter; and bills looking toward the adoption of a radically changed and improved system have been introduced into the Legislatures of Minnesota, Indiana, and possibly of other States, but with practically no result. In New York, the Land Transfer Reform Association, after long and persistent effort, succeeded in 1889 in securing the enactment of a block-indexing law for New York City, to take effect January 1, 1891, which will probably pave the way for a more complete system in the future, though Mr. Dwight W. Olmstead, the most active man in securing the very valuable law, does not approve the Torrens system, at least for use in New York City. In connection with a system of registration of possessory titles where the title seems to be somewhat in doubt, and a statute of limitations that would secure an indefeasible title in comparatively few years, as is done in some of the English colonies, there seems to be no really valid reason why the Torrens system might not be used to advantage anywhere, though it would be well probably to follow the New York plan of block-indexing as a preliminary measure.

A chief proof of the excellence of the Torrens system is the fact that it has been in use now some thirty years, and that it has universally commended itself to the States that have adopted it. No country thinks of repealing the law establishing the system; no individual wishes any other form of title. It everywhere has proved sufficient for all forms of conveyancing, has materially lessened the chances of fraud, has raised the value of land, and has facilitated dealings of all kinds in which land titles appear.

The advantages of the system may, perhaps, be best summed up in brief in the words of the Registrar-General of British Columbia, telling what the reform has accomplished in his country:

"1. The title to real property has been greatly simplified without radical changes in the general law.

"2. Stability of title, with safety to purchasers and mortgagees, has been secured.

"3. The ownership of property, either in town or country, is shown by the register at a glance, and whether incumbered or not.

"4. It increases the salable value of property.

"5. It enables both vendors and purchasers to accurately ascertain the expenses of carrying out any sale or transfer.

"6. It protects trust estates and beneficiaries.

"7. It prevents frauds, and protects purchasers and mortgagees from those misrepresentations common in all countries among a certain class of legal practitioners and land agents.

"8. It has secured the chief advantages of the old system of registration of deeds (of which notice is the most important principle), and has operated so as to almost entirely dispense with the investigation of prior title.

"9. Loans on mortgages are effected, and transfers of the fee are made, with as much ease as the transfer of bank stock is made in England, a search of from five to ten minutes being all that is necessary to disclose the state of any registered title."

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[NOTE.—As the purpose of this article is not to expound the Torrens system or to give a thorough discussion of land transfer, but simply to call attention to the importance of the question and to give a hint as to the nature of the reform, it may be well to name a few authorities that will be sufficient to give an outline of the system. Of course, a thorough study would involve the comparison of the laws themselves of countries using various systems.]

1. An Essay on the Transfer of Land by Registration, by Sir Robert Torrens, K.C.M.G. Cassell & Co. (Cobden Club publications.) Price, 6d.

2. Land Transfer Reform: Two addresses. By J. Herbert Mason, President of the Canada Land Law Amendment Association. These pamphlets may be obtained of Mr. Mason, Toronto, Canada. Five cents each.

3. Several articles in the last four volumes of the *Law Quarterly Review* on the movement in England, Prussia, and elsewhere.

4. Herbert C. Jones: Torrens' System of Land Transfer. A practical Treatise on the Land Titles Act (Ontario) and the Real Property Act (Manitoba), embracing all the latest decisions in England, Australia, and Canada. Carswell & Co., 30 Adelaide Street, East Toronto. Half calf, $5.

5. A Manual of the Law of the Registration of Titles to Real Estate in Manitoba and the Northwest Territories. By Louis William Coutlée. Carswell & Co., Toronto, 1891. This book contains a good bibliography of the subject.

6. Dain, Alfred: Le Système Torrens, son application en Tunisie et en Algérie. Paris: Larose et Forcel, 1885.

7. Land Transfer Reform, with an Explanation of the New York Block-indexing Act: a paper read before the American Bar Association, August 20, 1890. By Dwight H. Olmstead. Dando Printing and Publishing Company, 34 South Third Street, Philadelphia, Pa.

8. The Block-indexing Law of New York and the Act to provide for Short Forms of Deeds and Mortgages, are published in pamphlet form by Baker, Voorhis & Co., 66 Nassau Street, New York.

THE ECONOMIC BASIS OF PROHIBITION.

In this paper I desire to touch upon a single aspect of the important problem which is now agitating the great American public. The moral, religious, and educational phases of the temperance movement receive ample attention, yet the subject is seldom treated from a purely economic standpoint. This inattention to the economic aspect of prohibition is, on the part of the economists, largely due to the emphasis they attach to the "let alone" policy in all commercial transactions. Since Adam Smith the whole force of economic thought has been directed to the tearing down of all restrictions, and the creation of perfect freedom in all exchanges. Yet, in spite of this general movement, many restrictions upon the actions of individuals have of late years been enforced, and there is now a strong movement among economists to extend much more protection to the average man against the aggressions of the few who are so situated that they gain by the loss of the many.

Prohibition viewed from an economic standpoint is of especial importance at the present time, because some of the most popular arguments which our opponents use can be answered only by an examination of the economic basis of prohibition. You often hear it claimed that the present agitation against the use of liquor is a passing movement based upon a mere sentiment which will drop out of notice as soon as its friends find some new hobby. What, it is asked, has this agitation to distinguish it from the Know-nothing movement, the anti-Mason craze, or any of the dozen other sentimental excitements which have come and gone within the memory of many who are now living?

Even if no one asked such questions as these, yet similar

questions arise in the mind as soon as we think of the great change in public opinion about temperance, which has taken place within the last half century. Why has there been a growing dissatisfaction with the drinking habit during all this period? It cannot be accounted for upon moral or religious grounds, since we would not claim for ourselves any great superiority over our grandfathers in these respects. They had their religious and moral awakenings and revivals, and were keen and pronounced in their denunciations of all the evils they saw or felt, and yet they never took a stand against drinking in the way that all present religious and moral bodies are forced to do. Even those who see no good in prohibition are compelled to acknowledge the evils of drinking and to devise plans by which they can be removed.

From these facts there can be but one inference. The people of America are discontented with freedom in drinking. Something of importance has happened within the last fifty years which has entirely changed the public mind as to alcohol and its various compounds. In some fundamental way our civilization has been changed so that the evils of drinking have been forced into prominence.

Any explanation of this change involves a much wider and deeper investigation than is contained in a mere study of our drinking problems. Our eating as well as our drinking habits must be examined before we can clearly see the laws which govern our appetites. From the time of the primitive man until now there have been gradual changes in men which make their desire for food and drink different from that of our early ancestors.

The first law to which I shall call attention is this: Every increase in the variety of food reduces appetite. If a person lives upon rice or potatoes alone he must have a much larger quantity of food than if several articles are parts of his daily diet. Each new article contains new ingredients which can supply some needs of the system more fully than other foods have done. There is a great

economy in the use of a large variety of articles, as through them the needs of the system are supplied with much less waste than if any one article formed the sole diet. Every increase in the variety of food, by diminishing the quantity of food which the system needs to maintain health, reduces the appetite of the consumer.

There are also many other changes in food which have aided in the reduction of our appetites. Where the food-supply is very irregular, so that periods of plenty and famine follow one another regularly, enough must be eaten during the one period to enable the eater to hold out during the other, and for this reason he will need a stronger appetite than if he was supplied with three good meals each day. The greater use of clothing and fuel for our houses also reduces our need of food, and thus acts upon our appetites. Coal and wood now take the place of the large quantities of fat food with which our ancestors used to keep themselves warm. Our stomachs call for less food when we live in close houses with hot air pouring into each room. Our coal-bins grow in size while the pantries occupy less space. If anyone doubts the gradual reduction of our appetites, even a casual examination of our eating habits must convince him of the great change which is going on all around him. Our forefathers ate great quantities of a few articles, while to-day we want a little of a great variety of articles. Notice the increase in the variety of food offered at our markets or in our stores. See the difference in the quantity and quality of the food which our immigrants eat as compared with the food of families of whom several generations have resided in this country. The appetite for fat food has been so reduced that it is only eaten in the form of butter, while many of the coarse foods of former days have entirely disappeared.

This evident fact of the decrease of the appetite lies at the basis of the change in our drinking habits. A century ago some one drink satisfied the wants of each nation. This was usually a light drink, of which large quantities

were consumed. These drinks were in every house, and used as freely as tea or coffee now are.

In this way the reduction in our appetites tends to intensify the evils of drinking. With each reduction in their appetites drinkers resort to variety in their drinks or to stronger drinks, and are thus forced into conditions in which the habit will grow upon them. When a society reaches this stage its members must stop drinking or gradually sink into drunkards. The first course is likely to be chosen by those who have the weakest appetites, and are thus less tempted by liquor; while the latter path has so great a charm for those with strong appetites that they are likely to be hurried along to the drunkard's grave. Society thus gets split into two parties: the one searching the world over for stronger drinks and more stimulation, while the other, dropping all liquor out of its diet, searches all over the same world for a greater variety in food. Almost every ship brings in a new drink for the one class and a new food for the other. As differently as the two classes may act, yet the same economic tendency is at work in both cases. The appetite is reduced and old foods and drinks have lost their former attraction. The one class stop drinking to get new kinds of food, while the other use coarser food so as to have more stimulating drink.

The reduction of the appetite is not, however, the only active economic cause forcing the temperance issue upon the American people. There are many climatic and social conditions peculiar to America which aggravate the evils of alcohol. Perhaps the best way to illustrate my meaning will be to contrast our country with Germany. We hear so much about the immense quantity of liquor used by the Germans that we are apt to imagine that it is a land of drunkards, yet they suffer less from drunkenness than we do. The cause of this difference lies largely in climatic conditions. Germany has a steady unchanging climate. It is never very hot or very cold, nor is it subject to sudden changes in the weather. The ocean keeps it cool in sum-

mer and moderates the winter. As a result, the need for drink remains about the same through the year. Each person acquires a habit of drinking a fixed number of glasses each day, from which he rarely departs. This habit is reinforced by the German custom which forbids treating. Each one orders his own liquor and pays for it, and is thus kept from the temptation of drinking more than he would or what he does not want. I do not say that in Germany the evils from drinking are not plainly visible, nor that they are not increasing, but the climate of the country and the habits of the people keep the evil within bounds, and will continue to do so long after it has become intolerable in other localities less favorable by nature and by the usage of the people.

In turning our attention to America, the contrast is very marked. With the possible exception of Siberia, no large country has so variable a climate. Dry hot summers are followed by piercing cold winters. When our melting weather comes we need large quantities of water to replace the waste through perspiration. Our drinkers resort to the various compounds of alcohol to get the needed water and thus use much larger quantities than they otherwise would.

Again, in winter the same tendency is seen. We all know that alcohol does not keep the body warm, yet it deadens the nerves of the drinker so that he cannot feel the cold. It thus deceives the user, and causes him to resort again and again to his bottle to keep out the chilling blasts of winter. Alcohol will keep a man cool or it will keep him warm. It is thought to be a sure remedy in either case. So each spell of hot or of cold weather sends an increasing host of customers to every saloon in the land. In this way every change in the weather increases the use of liquor and helps to fasten upon its users habits which they would not acquire in a moderate climate.

To these evils must be added those which come from our social condition. Treating is so universal that a per-

son is looked upon as mean who will drink without asking his friends to drink with him. In this way men drink not only more than they otherwise would, but also they do what is much worse—drink a greater variety. By the time a group of half a dozen friends have each treated, as many different kinds of liquor are mixed together in their stomachs, and this mixture of drinks is, as we have seen, one of the leading causes of drunkenness.

I have compared the condition of Germany with our own country to show why the evils of intemperance are so much more prominent here, and why it is that we are forced into a prohibition agitation so much more quickly than has been the case in foreign lands. It shows also why our immigrants are so indifferent, if not opposed, to the temperance movement. They do not see why their old habits fitted for another continent are unsuited for their best development here. If we are to win them to our cause, it will not be by moral arguments, but by a clear presentation of the economic causes which force Americans to discard alcohol. Our climate and social conditions are fixed factors in our civilization, and immigrants must adjust themselves to their new environment or sink into misery and vice. Even at the present time the reaction against drinking can be plainly seen among the second generation of the Germans and Irish, and the day is not far distant when they will be as active in temperance work as the descendants of the first settlers now are.

One more cause of increased drunkenness needs to be mentioned before the full force of the present situation can be clearly seen. In olden times no strong liquor could be made. The process of distillation, which has made strong drinks possible, is a modern invention. To this evil has been added a new one, arising from the use of cheaper material in making liquor. Rye has been displaced by corn in the manufacture of whiskey, and in Germany even potatoes are called into use. The miserable stuff which is thus thrown upon the market lacks any of the redeeming

qualities which were possessed by the pure liquors used in former days. No one can drink it without having his higher nature dwarfed, and he soon becomes a mere brute, the willing slave of an abnormal craving.

If I have made myself clear, you will recognize how fundamental are the changes which have forced the temperance issue upon the American people. They are all of an economic nature, and will make us put ourselves in harmony with our present environment, no matter how many inherited ideas must be displaced before a solution is found. Each person is compelled to make a choice which will place him among the law-abiding citizens who cultivate innocent amusements or among those who stimulate their appetites and passions by the coarse pleasures of the saloon.

There is, I confess, a degree of truth in the charge that prohibition often stimulates crime. Separate out the good in society from the bad, and you take from the bad many of the restraints which keep them from crime. In this way every measure that makes the good better makes the bad worse. The sharper the lines are drawn between the two classes, the more will the good progress and the quicker will the bad run through their downward course. With prohibition it is easier to be good and more dangerous to be bad. Do not, however, understand me as saying that prohibition increases the number of criminals. It shuts off the supply of criminals by removing one of the leading temptations to crime. But those who deliberately choose the wrong path become more vicious and force themselves more into public attention.

It should, however, never be forgotten that the Prohibition party is not the cause, but merely the effect, of the ever-increasing evils of intemperance. It is weak appetites, a variable climate, and cheap adulterated liquors that are the causes of the abnormal craving which leads to crime. And did prohibition cause any of these? No. It is merely an effect of these economic causes through which society seeks

to ward off some of the evils which flow from them. Those who live out of harmony with their economic environment must pay the penalty, and they have no ground for complaint, even if they slide into vice a little more rapidly because their neighbors are seeking to protect themselves more fully against the worst temptation of modern civilization.

When we clearly see that Prohibition is the effect of powerful economic causes, we place ourselves in a position to judge of the outcome. Separate society into two classes with different habits, customs, and diet, and that class will displace the other which makes the best use of the resources of our country. The temperance people put our land to a much more productive use than do their drinking and smoking neighbors. See how destructive of the qualities of the soil a crop of tobacco is, and the crops from which liquor is made are as bad. Two temperance people can be supported on the land needed to satisfy the coarse tastes of one regular frequenter of the saloon. For this reason the economic advantage of the abstainers is so great that they will increase in numbers much more rapidly than the drinkers do, and will in the end form a large majority of our population. They will gradually acquire a larger share of the land and capital of the country, and by their numbers and influence suppress their opponents or force them to reform.

In this respect the slavery contest furnishes a good example. At the start at least half of the wealth and population of the country was on the side of the South. But the use which slave labor made of the land was much inferior to that made by freemen of the North. As a result the North increased in numbers and wealth much more rapidly than the South. When the decisive moment came the North was so superior in both these regards, that even a forcible resistance on the part of the South was of no avail. It was the economic advantage of the North, and not the

superior bravery or morality of its people, that made them the masters of the situation. The same result must follow in the great contest which is now opening to counteract the destructive tendencies of alcoholic drinks. Slowly and steadily the abstainers gain upon their rivals through the better use they make of the land, as well as through the fact that their habits and diet fit them better for the climatic and the social conditions of our country.

In closing, let us return for a moment to the main question: Is the growing dissatisfaction with drinking habits the result of permanent causes which will keep grinding along until they force the American people to prohibit their use? The answer to this question must be sought, not in morals or politics, but in economics. I have tried to point out how incongruous are these habits with our climate and civilization. If our appetites are diminishing, if our climate makes moderate drinking especially difficult, if not impossible, and if the crops from which our liquors are made waste the productive powers of the land and prevent its best use, surely we have the best reasons for believing that the present dissatisfaction with drinking will continue and increase until it generates a sentiment and a moral tone which will be powerful enough to close every saloon and distillery in our land.

Our civilization has advanced too far for us to think of making or keeping drinking respectable. The use of light drinks is not an equilibrium at which people can long remain. Every reduction of their appetites makes them dissatisfied unless the strength of their liquor is increased. Weak appetites need strong drinks to give that stimulation for which the drinker resorts to alcohol. Prohibitionists are not responsible for the fact that drinking is no longer respectable. It arises solely from that graded series of drinks found in every saloon by which the drinker passes gradually to stronger drinks as weaker ones lose their attraction. This tendency divides society into two parts,

and forces the respectable to join in a compact opposition to all drinking. The sharper this contest becomes the more have the abstainers to gain. Little by little will their economic advantage increase their strength, until their moral influence will keep the drinker from the saloon and their political power will take the saloon from the drinker.

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INTERNATIONAL LIABILITY FOR MOB INJURIES.

IT is the undeniable right of every sovereign State, and to a reasonable extent the duty as well, to protect the persons and the property of its citizens visiting or domiciled in a foreign country, and when they are injured in a manner not warranted by the principles of international law, to intervene in their behalf. If the foreign country permits aliens thus to visit or reside in its territory, it impliedly guarantees them the same measure of safety and protection as is provided for its own citizens. Should it fail in this international duty in any respect, the government of the injured alien has a just cause for intervention and complaint. The principle was stated concretely by Chief Justice Marshall to be that

> "The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing this condition, entitled to the protection of his own government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have the right to claim that protection, and the interposition of the American government in his favor would be considered as a justifiable interposition." [1]

This language was adopted as correct by Mr. Webster, then Secretary of State, in his report to the President on Thrasher's case,[2] and has been since generally approved as embodying an accepted principle of international law and a rule for the guidance of the government of the United States.

[1] Murray *v.* Schooner "Charming Betsy," 2 Cranch, 120.
[2] 6 Webster's Works, p. 523.

It being conceded, then, that an alien may, under certain circumstances, claim the protection and intervention of his own government, the more difficult question remains as to what offences against the alien will warrant such intervention and a demand for redress. An offence against an alien may be against a domiciled alien, or a visiting alien, or against an alien diplomatic or consular agent. The offence may be committed by private citizens or by the public authorities, or even by other resident aliens. It is necessary, therefore, in determining the extent of responsibility which the alien's government may justly throw upon the government where the offence is committed, to distinguish somewhat clearly each of these cases.

In the case of a domiciled alien the duty, and even the right, of his native government to interfere in his behalf may be greatly diminished or even lost by his own act in deliberately submitting his person and property to the jurisdiction of the country of his domicile. Any other rule would lead to endless international disputes of the gravest character, and give to the alien a double status—that of a citizen of his own country for the purposes of protection, yet without corresponding duties and obligations, and that of a permanent resident of his adopted country, deriving from it support and protection, yet with a reserved right of appeal to another sovereign power. Mr. Marcy, when Secretary of State, stated the rule to be observed in such cases with great clearness and force:

"It is essential, he said, to the independence of nations, and to the public peace, that there should be some limit to the right and duty of a government to interfere in behalf of persons born or naturalized within its jurisdiction who, on proceeding to a foreign country, and being domiciled there, may receive injuries from the authorities thereof. By the general law, as well as by the decisions of the most enlightened judges, both in England and in this country, a neutral engaged in business in an enemy's country during war, is regarded as a citizen or subject of that country, and his property, captured on the high seas, is liable to condemnation as lawful prize. No sufficient

reason is perceived why the same rule should not hold good in time of peace also, as to the protection due to the property and persons of citizens or subjects of a country domiciled abroad."[1]

Sir Robert Phillimore states the rule as follows:

"The distinction between domiciled persons and visitors in or passengers through a foreign country is never to be lost sight of, because it must affect the application of the rule of law which empowers a nation to enforce the claims of its subjects in a foreign State. The foreign domicile does not indeed take away this power, but it renders the invocation of it less reasonable, and the execution of it more difficult."[2]

In accordance with this rule, our government has frequently declined to interfere for the protection of citizens who, by acts indicating an intention to subject themselves permanently to a foreign jurisdiction, have thereby lost the right to claim the protection of the home government. Thus it has been held that failure to pay the income tax, enlistment in a foreign army, permanent residence abroad, and avoidance of the ordinary duties of citizenship, may be sufficient to release a government from its duty of protection. In the once famous cases of Arbuthnot and Ambrister, executed by General Jackson in 1818 for complicity in the Seminole War, the government of Great Britain, to which they owed allegiance, declined to interfere on the ground that by inciting an attack on a friendly government they had forfeited the protection of their own government.

If, however, the alien be only transiently visiting or passing through a foreign country, his status is wholly different. In such a case he loses none of his claims on his own government, for the reason that he evades none of his duties to it. He is merely the guest of the foreign country, owing it the duty of obedience to its laws and entitled from it to protection in person and property.

[1] Letter to Mr. Clay (Peru), May 24, 1855, 2 Whart. Dig Int. L.., 447, 448.
[2] 2 Phill. Int. L., 6.

Any offence against him must be treated as an offence to a friendly alien, for which reparation, in proper cases, may be demanded by his government.

This distinction between domiciled and visiting aliens may be rendered unavailing by reason of treaty stipulations fixing the status and rights of all aliens domiciled or visiting in a country who are subjects of the other treaty-making power. In such cases the obligations of the country in which the alien may reside or be temporarily visiting are fixed by the terms of the treaty, and not by the principles of international law. It is now common in treaties of amity and commerce to make such stipulations, and an injured alien may now generally claim redress under the terms of such a treaty.

In case the alien had a representative character, either diplomatic or consular, an injury to him is regarded as in effect an injury to his government. It is true that consular agents are not entitled to the same privileges and immunities as diplomatic agents, but they are, nevertheless, representatives for special purposes of their own governments, and any unlawful violence offered to them is an insult to the sovereignty which they represent.

As to the agents of the injury the distinction may be even broader. There is not believed to be any distinction, however, between injuries committed by citizens and by resident or visiting aliens. In either case the rights of the injured alien have been invaded while submitting himself to the protection of a foreign State, and that State owes him equal protection against the wrongful acts of its own citizens and those of other aliens whom it may have received within its territory. Such protection consists, at least in civilized States, in opening to him impartially the door to redress, usually by means of its courts, and in some cases by executive action. But if the offence be committed by the public authorities of the country the case is far different. Under such circumstances the government of the alien may insist immediately upon reparation if the

injury is the result of positive violence or maltreatment. Such act of the authorities may, moreover, be either positive or negative. They may use unlawful violence; they may connive at unlawful violence; or they may wilfully neglect to provide protection against unlawful violence. In any case, the government for which the authorities act becomes liable for the wrong-doing of its agents.

The application of these principles to cases of injuries to aliens arising out of the violence of a mob is not difficult.

It would seem reasonable that no greater international responsibility should rest upon a government for the unlawful action of a mob than for the unlawful action of a private individual. And in general this proposition is true. It is only when the government either, having knowledge of the intention of a mob, fails to use due diligence to prevent it from assembling and executing its design, or else, having knowledge of its actual and continuing violence, fails to use due diligence to suppress it, that any responsibility can attach to the government, as such, for the injuries suffered by the aliens. This is believed to be a fair statement of the rule of international law as it is applied in practice by the powers of the civilized world.

In addition to this rule, however, and in many cases a corollary of it, is the further rule that the government is under an international obligation, first, to use all proper means for the punishment of the offenders, and second, to provide a legal remedy to the sufferers or their representatives. Upon the first point, our government has again and again enunciated the principle that a wilful neglect to bring the transgressors to justice is an implied sanction of their acts. This was so declared by Secretary of State Marcy in 1854, with regard to the outrages committed by the lawless inhabitants of Greytown upon the persons and property of American citizens engaged in inter-oceanic

transit across Nicaragua. It was so admitted to be the law of international obligations by Secretary of State Fish in 1875, in reply to the claims of Mexico based on the murder of Mexican citizens by Texan border raiders. Upon the second point there is a like uniformity of utterance by the State Department of the government of the United States. As early as 1793 Jefferson, as Secretary of State, declared the test as to the right of intervention to be,

"Whether the party complaining has duly pursued the ordinary remedies provided by the laws, as was incumbent on him before he would be entitled to appeal to the nation, and if he has, whether that degree of gross and palpable negligence has been done him by the national tribunals which would render the nation itself responsible for their conduct."[1]

The universal rule in such cases is that the injured party is bound to exhaust the judicial remedies afforded him by the municipal laws of the place of the injury before he can appeal to the executive department of the government for redress. This principle carries with it the corollary that a State is bound to supply a judicial remedy or to be held at once responsible through its executive department. It is therefore the practice to submit claims for indemnity in such States as China directly to the executive department, while in European States they must first be adjudicated by the courts. There must be a remedy somewhere, and if the State provides no judicial remedy, another State whose citizens have been injured may demand redress of the government through diplomatic channels. The law on these two points was well stated by Mr. Fish in these words:

"The rule of the law of nations is that the government which refuses to repair the damages committed by its citizens or subjects, to punish the guilty parties or to give them up for that purpose, may be regarded as virtually a sharer in the injury, and as responsible therefor."[2]

[1] Letter to the Attorney-General, Mar. 13, 1793; 2 Whart. Dig. Int. L., 675.
[2] For. Rel. of U. S., 1873, title Mexico; 2 Calvo, Int. L., 397.

Several instances have occurred in the course of American diplomacy when it became necessary to apply these principles in disposing of the claims of other governments based on injuries to aliens.

In 1850 mobs in New Orleans and Key West, influenced by the severe punishment inflicted in Cuba upon the members of a filibustering expedition from the United States, sacked the houses and shops of many resident Spaniards and in New Orleans attacked the Spanish consulate itself. In this outbreak of mob violence there were two distinct injuries, the first and most serious in the view of international law being to the dignity and honor of Spain as represented in the person of her consul and the inviolability of the consular office, and the second being to the persons and property of the resident subjects of Spain. In accordance with the principles above set forth, Mr. Webster, then Secretary of State, drew a sharp distinction between the liability of the government of the United States for these two classes of injuries. As to the first, he apparently entertained no doubt that the government owed the amplest apologies for the affront to the sovereignty of Spain and the completest indemnity which could in justice be asked. In accordance with this view President Fillmore, in his annual message in 1851, recommended that Congress should appropriate the necessary money to carry out this purpose, and in this recommendation Congress concurred. This indemnity was granted as a matter of right.

As to the private Spanish residents who were injured by the mob, Mr. Webster emphatically denied that they had any just claims against the government for indemnity. They had come, he said, voluntarily into the jurisdiction of the United States to pursue their private business and objects, and while within that jurisdiction were entitled to the same measure of protection, and no more, as was accorded to our own citizens. In fact, as he pointed out, their protection in the way of remedies was even ampler than that accorded to the American citizens who had

suffered like injuries at the hands of the mob, for while the injured aliens could pursue their remedies in the Federal courts or the State courts at their election, the citizens could pursue theirs only in the State courts. This double judicial remedy being therefore opened to the injured Spaniards, the government of the United States declined to regard the claims for indemnity as resting on any accepted principle of international law or any obligation of treaty stipulations. Nevertheless, our government expressed the greatest sympathy for the injured subjects of Spain, and as a mark of appreciation of the generosity of the Spanish sovereign in pardoning certain American citizens who had been condemned to death under the Spanish laws, Congress appropriated, in 1853, the sum necessary to indemnify the Spanish victims of these riots. The money was paid, however, upon the understanding that it should be deemed a gratuity and not a lawful indemnity. The principle was saved, and the reparation was granted as a matter of grace.[1]

In subsequent diplomatic discussions arising out of mob injuries the precedent of this case has been frequently cited both for and against the United States. It has always been contended by our government, however, that there was in this case no recognition whatever of the principle of indemnity for mob injuries, but that, on the contrary, the principle was expressly denied, and that the government refused to consider itself in any way responsible for injuries committed by private individuals upon aliens residing within its jurisdiction. It is certain that the earlier correspondence of the State Department strongly presses this view of the case and that there was no failure politely to emphasize it at the time of the payment of the indemnity. Any fair interpretation of the correspondence and the circumstances must lead to the conclusion that

[1] House Ex. Docs., 2 and 113, 32d Cong., 1st. sess.: Resolution of Cong., March 3, 1853.

there was no recognition of any binding international obligation growing out of the mob violence other than that to the consular representative of Spain.

In 1880 a mob in Denver attacked the Chinese residents of that city, destroyed a large quantity of their property and killed one of their number. The Chinese government immediately demanded that protection be extended to Chinese subjects in Denver, that the guilty persons be punished, and that the owners of the property destroyed be compensated for their losses. The government of the United States, replying through Mr. Evarts, expressed its indignation at the wanton and lawless action of the mob, assured the Chinese government that as full protection would be accorded to the Chinese as to our own citizens, and explained that under our form of government the punishment of the offenders was solely within the jurisdiction of the State of Colorado, and that the Federal Government could not interfere in that regard. As to the suggestion that indemnity should be afforded the sufferers, Mr. Evarts replied in these words:

"Under circumstances of this nature, when the government has put forth every legitimate effort to suppress a mob that threatens or attacks the life, the safety, and security of its own citizens and the foreign residents within its borders, I know of no principle of national obligation, and there certainly is none arising from treaty stipulation, which renders it incumbent on the government of the United States to make indemnity to the Chinese residents of Denver who, in common with citizens of the United States at the time residents of that city, suffered losses from the operations of the mob. Whatever remedies may be afforded to the citizens of Colorado, or to the citizens of the United States from other States of the Union resident in Colorado, from losses resulting from that occurrence, are equally open to the Chinese residents of Denver who may have suffered from the lawlessness of the mob. This is all that the principles of international law and the usages of national comity demand."[1]

This reasoning seems not to have been satisfactory to the Chinese government, which continued to press the

[1] For. Rel., 1881, title China, p. 320.

claim for indemnity. Mr. Blaine, who had in the meantime succeeded Mr. Evarts as Secretary of State, continued the diplomatic discussion along the same line, and declined to recognize any liabilities as attaching to the government of the United States in consequence of the mob violence in Denver. This position was all the more tenable in view of the later developments, by which it appeared that the authorities had at the time promptly taken measures to suppress the mob, and had since arrested a number of the ringleaders and indicted two of them for the murder of the Chinese subject. In fact, the Chinese government failed to show any point in which the government of the United States had in any way disregarded the obligation of international comity or of treaty rights. No neglect was shown before or at the time of the violence, and there was apparent no subsequent indifference with regard to the punishment of the offenders. In addition to all this, the courts of the State of Colorado and of the United States were open to all Chinese subjects who had suffered losses through the violence of the mob. In view of all this, our government properly declined to entertain any claim for indemnity.

In 1885 the same question was again reopened with China under the most distressing circumstances. A mob at Rock Springs, Wyoming, made an unprovoked attack upon the Chinese residents of the place, murdered twenty-eight of their number, wounded fifteen, and destroyed a large amount of property. The local authorities took no adequate measures either to prevent the outrage or to punish the perpetrators, while the local courts were notoriously not an impartial forum in which the sufferers could seek redress. The whole proceeding by the authorities, in the way of investigation and punishment, was characterized by President Cleveland as "a ghastly mockery of justice."[1]

[1] Special Message, March 2, 1886.

It appeared, however, upon investigation, that the assailants as well as the victims were aliens, that the violence grew out of the refusal of the Chinese to join in a strike then pending in the mining regions, and that American citizens were not responsible for the outrage. But this, while it saved to some extent the national honor, did not in anywise limit the national obligations as fixed by treaty or by international law. If any liability attached to the government of the United States in consequence of the outrage, it was equally binding, notwithstanding the alienage of the perpetrators. This was practically conceded by Mr. Bayard in his correspondence with the Chinese minister and by the President in his message to Congress.

The Chinese government on this occasion pressed the claim for indemnity with more than ordinary vigor, as it was well able to do in view of its own recent course in providing redress for American citizens who had suffered from the riots in Canton and other places in 1883. The Chinese minister appealed to the practices of his own government in like cases, to the terms of treaty stipulations, and to the spirit of modern international relations. The position of our government was not an easy one. The outrage had been cruel in the extreme; the prompt action of China in redressing the wrongs of Americans under like circumstances called for recognition from a republic which prided itself on its civilization and love of justice; the dictates of humanity and the precepts of morality all leaned toward a policy of full and generous reparation. But seemingly opposed to all this was an alleged principle of international law which it was deemed impolitic and, looking to the future, highly embarrassing to ignore.

In this predicament the government steered a middle course, maintaining the supposed principle on the one side while recommending a voluntary indemnity on the other. Mr. Bayard, in his note to the Chinese minister, took the ground that as the offence was committed by private indi-

viduals against private individuals there could be no liability on the part of the government, and that for all injuries received the sufferers had an adequate remedy in the courts of Wyoming and the United States:

"The government of the United States recognizes in the fullest sense the honorable obligation of its treaty stipulations, the duties of international amity, and the potentiality of justice and equity, not trammelled by technical ruling nor limited by statute. But among such obligations are not the reparation of injuries or the satisfaction by indemnity of wrongs inflicted by individuals upon other individuals in violation of the law of the land.

"Such remedies must be pursued in the proper quarter and through the avenues of justice marked out for the reparation of such wrongs.

"The doctrine of the non-liability of the United States for the acts of individuals committed in violation of its laws is clear as to acts of its own citizens, and *a fortiori* in respect to aliens who abuse the privilege accorded them of residence in our midst by breaking the public peace and infringing upon the rights of others, and it has been correctly and authoritatively laid down by my predecessors in office, to whose declarations in that behalf your note refers. To that doctrine the course of this government furnishes no exception."

After proceeding to illustrate this principle by reference to the course of the government as to the Spanish riots in New Orleans in 1850, the Secretary proceeds:

"Yet I am frank to say that the circumstances of the case now under consideration contain features which I am disposed to believe may induce the President to recommend to Congress, not as under obligation of treaty or principle of international law, but solely from a sentiment of generosity and pity to an innocent and unfortunate body of men, subjects of a friendly power, who, being peaceably employed within our jurisdiction, were so shockingly outraged; that in view of the gross and shameful failure of the police authorities at Rock Springs, in Wyoming Territory, to keep the peace, or even to attempt to keep the peace, or to make proper efforts to uphold the law or punish the criminals, or make compensation for the loss of property pillaged or destroyed, it may reasonably be a subject for the benevolent consideration of Congress whether, with the distinct understanding that no precedent is thereby created, or liability for want of proper enforcement of police jurisdiction in the Territories, they will not, *ex gratia*, grant pecuniary relief to the sufferers in the case now

before us to the extent of the value of the property of which they were so outrageously deprived, to the grave discredit of republican institutions." [1]

In accordance with this correspondence, President Cleveland, in his special message of March 2, 1885, recommended an appropriation for this purpose, "with the distinct understanding that such action is in nowise to be held as a precedent, is wholly gratuitous, and is resorted to in the spirit of pure generosity toward those who are otherwise helpless." The appropriation was duly made and the claims were settled to the satisfaction of the Chinese government and the injured parties.

This case comes dangerously near the line at which governmental responsibility begins, as that line is fixed by international law and by the declarations of our own government. The confession by the government that no adequate protection was afforded, that "the proceedings for the ascertainment of the crime and fixing the responsibility therefor were a ghastly mockery of justice," and that there existed a "palpable and discreditable failure of the authorities of Wyoming Territory to bring to justice the guilty parties, or to assure to the sufferers an impartial forum in which to seek and obtain compensation for the losses which those subjects [of China] have incurred by a lack of police protection," [2] is a practical admission that the United States—for China deals only with the Federal government—had failed either to punish the guilty or to offer an adequate means of redress to the innocent. On both of these points our own government has on other occasions declared: (1) That neglect to prosecute offenders would be a denial of that justice which the alien's government has a right to expect; [3] and (2) that justice may as much be denied when it would be absurd or useless to

[1] For. Rel., 1886, title China, pp. 166, 168.

[2] President's Message, March 2, 1886.

[3] Sec. of State Fish, February 19, 1875; For. Rel., 1875, title Mexico.

seek it by judicial processes, as if it were denied after having been so sought.[1]

Confessedly the local government of Wyoming neglected to prosecute in good faith the offenders in the Rock Springs riots, and that it would have been useless for the Chinese sufferers to resort to the courts for justice is expressly declared by the President. Under such circumstances there would seem to have been a plain and palpable denial of justice, leaving to the sufferers as the only recourse an appeal to the Federal Executive through diplomatic channels. That this view largely influenced the State Department and the Executive in recommending an indemnity cannot be doubted. The reservation of the alleged principle may therefore justly be regarded as a piece of excessive diplomatic caution, intended mainly to protect the government from the full force of this case as a precedent. There can be no doubt that morally the United States were bound to repair, so far as possible, the injuries done to these inoffensive aliens; while there is little doubt that the accepted principles of international law laid upon the government an equally binding obligation.

It is to be observed, however, that this international liability was fixed, not by the fact of the mob injury itself, nor yet by the course of China toward the United States in like cases, but by the conduct of the public authorities subsequent to the outrage. Had the proceedings for the punishment of the offenders been honestly and vigorously conducted, and had the judicial remedy of the sufferers been adequate and impartial, no responsibility could have been fastened upon the Federal government. Under such circumstances, to quote Sir Robert Phillimore,

> "The State must be satisfied that its citizen has exhausted the means of legal redress offered by the tribunals of the country in which he has been injured. If these tribunals are unable or unwilling to entertain and adjudicate upon his grievance, the ground for interference is fairly laid."[2]

[1] Sec. of State Fish., Dec. 16, 1873: For. Rel., 1873. [2] 2 Int. L., 4.

But in this case there was, confessedly, no means of legal redress to exhaust, for the tribunals had plainly exhibited an unwillingness to entertain or adjudicate in an impartial manner the claims of the injured subjects of China. This being so, the ground for interference was fairly laid, and China was fully justified in demanding reparation at the hands of the government of the United States. However this fact may have been obscured by the cloud of diplomatic verbiage and the reservation of alleged principles, it remains as the decisive test of liability in this and similar cases.

Pending the judicial investigation and diplomatic discussion of the mob violence in New Orleans on March 14th of the present year, by which a number of Italian subjects were unlawfully put to death, it may not be proper to do more than make a general application of the above principles to this particular occurrence. It is well to point out, however, that in some features this case is sharply distinguished from those already referred to. In the first place, the victims were in the custody of the public authorities, and therefore, being deprived of the ordinary means of retreat or self-defence, entitled to the fullest protection. In the second place, it would seem—although this may be a disputed question of fact—that the proposed attempt of the mob was known some hours in advance of the assault, and that those responsible for the safety of the prisoners took no adequate measures for their protection. If these two premises are fully established, it is difficult to see how, under the principles of international law as recognized and applied by our own government, the United States can escape from the claim of Italy for reparation; if, added to these, there should prove to be a failure of justice in the punishment of the offenders, the case would become a very strong one. The fact is, there would seem to be no practical difference in effect between an act of positive maltreatment of an alien prisoner by public officers and an act of culpable negligence on the part of such officers whereby such alien

prisoners are suffered to receive positive maltreatment at the hands of others. In the first case our government has emphatically asserted the right to redress from the executive department of the government, and in this it is supported by high authority. It is difficult to see why redress may not as justly be claimed in the case of wilful negligence resulting in injury.

In the case of a riot in Brazil in 1875, by which the property of certain American citizens was destroyed, Mr. Fish, then Secretary of State, declared that

> "It is the duty of Brazil, when she receives the citizens of a friendly State, to protect the property which they carry with them or may acquire there. If persons in the service of that government connive at or instigate a riot for the purpose of depriving a citizen of the United States of his property, the Imperial government must be held accountable therefor." [1]

And in a similar case occurring in Peru, Mr. Evarts declared that

> "A government is liable internationally for damages done to alien residents by a mob which by due diligence it could have repressed." [2]

These propositions involve in all cases questions of fact, and the facts must be accurately ascertained before the principles can be applied. It would therefore be premature to venture a final opinion upon the unfortunate affair at New Orleans; but should the pending investigation establish the fact that the public authorities, having knowledge of the proposed violence, failed to exercise due diligence to prevent it, the declarations and practices of our own government, as well as the just principles of international law, would serve to fix upon the Federal government a direct liability for the injuries sustained by the subjects of Italy.

E. W. HUFFCUT.

Indiana University Law School.

[1] 2 Whart. Dig. Int. L., 602. [2] Ibid.

THE TEACHING OF POLITICAL SCIENCE AT OXFORD.

I HAVE been asked to give an account of the Teaching of Political and Social Science at Oxford, but in order to do this in a way which will not be unintelligible or misleading, it is necessary to give some preliminary explanations as to the relation between the Universities and the colleges, and as to the system of examination for the degree of B. A.

Professor Bryce has helped English readers to understand the relations between the States and the Nation in the American Union, by the analogy of the relation between the colleges and the University in Oxford and in Cambridge; and American readers may profitably reverse the analogy in order to understand roughly an academical system that exists in no country except England. The analogy is, indeed, only a rough one: the University existed before there were any colleges, and there are at the present time collegiate students whom we might perhaps compare to citizens of the United States living in a Territory. But just as every citizen of a State is also a citizen of the United States, so every member of a college is also a member of the University, and is thus subject to two different sets of institutions and rules. The University alone confers degrees and regulates the examinations for them. Instruction is, however, provided by both the University, through its "professors" and "readers" (the latter may be compared with the "extra-ordinary professors" of a German university), and by the colleges, through their tutors and lecturers. University lectures are open to all members of the University. College lectures are intended primarily for the members of particular col-

leges, but of late years, through the system of combined lectures, college lectures have become in many cases as much "open" as University lectures. Most of the teaching, especially in some subjects, is done by the colleges. The University provides more of the instruction, relatively to what is done by the colleges, in natural science and in law than in other subjects.

As a general rule every undergraduate member of the University, except the "selected candidates" for the Indian Civil Service, who under present regulations cannot stay long enough, is supposed to be studying for the degree of B. A. But, as a matter of fact, the course of study is very different according as the student merely wishes to "pass" and obtain the degree, or aspires to "honours." The degree cannot be obtained in less than three years, and candidates who wish to take "honours" must not be of more than four years' standing when they come up for their final examination. The higher degree of M. A. follows upon the B. A. simply "through the progress of time and the payment of fees." Every candidate must pass "responsions" before or soon after the outset of his academical career. This examination practically takes the place of an entrance examination, which as such does not exist in the University. Every college in Oxford requires intending students to pass an entrance (matriculation) examination, the standard of which is in some places considerably higher than "responsions." "Responsions" is an examination in school work (Latin and Greek, arithmetic, elementary geometry and algebra). The student must next pass or obtain "honours" in the "first public examination" (commonly known as "moderations"), an examination mainly in Greek and Latin, taken during the second academical year. The student who is going to take "honours jurisprudence" or "honours modern history" as his final school, may, under certain conditions, substitute for the classical moderations what is known as the "preliminary examination in jurisprudence." It is

only in the "trial" or "second public examination" that subjects connected with political science come in. In this second public examination, a candidate may either take a "pass" in certain subjects, in which he has a limited range of choice, or he may seek to obtain "honours" (1st, 2d, 3d, or 4th class) in one of the seven "honour schools." These are (1) *Literæ Humaniores* (an examination mainly in certain Greek and Latin philosophical and historical books, and in kindred subjects), (2) Mathematics, (3) Natural Science, (4) Jurisprudence, (5) Modern History, (6) Theology, and (7) Oriental Studies. There is no special "school" of political and social science, but political philosophy (including political economy) is one of the subjects prescribed for the school of *Literæ Humaniores*. The questions set on this subject form only half of one paper in the examination, being combined either with moral philosophy, or with a general paper on ancient history. Candidates may offer "political economy" or "theories of the State" with a special study of one or more treatises selected by them as "special subjects" in addition to the ordinary work; but special subjects do not flourish much in this school, the ordinary work being sufficiently varied and arduous for even the best students. In the school of jurisprudence (and in the kindred examination for the degree of B. C. L.), jurisprudence, English constitutional law, and international law form a part of the prescribed course. The school of jurisprudence, as already said, is one of the avenues to the degree of B. A. No one can obtain the degree of B. C. L. without having previously obtained the degree of B. A. This degree he need not, however, have obtained through the school of jurisprudence. Certain books are "recommended" for special study. It should be added that this work in law is not in the strict sense a training for the legal profession, the qualifying examinations for which have in England no connection with the University examinations or degrees. In the school of modern history, political science and

political economy are prescribed and constitute an important element in the examination. A knowledge of certain books is required, viz.: Aristotle's *Politics* (subject matter), part of Hobbes' *Leviathan*, Bluntschli's *Theory of the State*, Maine's *Ancient Laws*, and Mill's *Political Economy*. One of the subjects very commonly taken up for the final pass examination is the "Elements of Political Economy," read in Walker's *Political Economy*, and parts of Adam Smith. The candidate for the Indian Civil Service, studying at Oxford under the regulations in force (until 1892), is occupied to a considerable extent with Indian law, Roman law, English law, jurisprudence and political economy, as well as with Oriental languages.[1]

In what precedes, we have described the place of political and social science in the Oxford examinations, and it now remains to show the actual provision for their instruction. This is given, as already explained, in part by the University and in part by the colleges. Annexed to this article will be found lecture lists of subjects connected with political and social science for 1890–1891 (extracted from its official lecture lists) which will serve as average

[1] At present candidates, not above nineteen years of age, selected by government after a competitive examination, have to spend two years at an approved university, if they wish to receive the government allowance. By the regulations which will come into force in 1892, no candidate must be under twenty-one years nor over twenty-four, and the subjects have been so altered that candidates who have studied for an "honour school" at Oxford will have a fair chance of success without further preparation. The time of special professional study after selection will, under the new system, be only one year, which will have to be devoted almost entirely to the vernacular languages of the presidency to which the civilian is going, and to Indian laws. My friend, Mr. F. C. Montague, of Oriel College (the editor of Bentham's *Fragment on Government*), who has had much to do with the instruction of Indian civilian students in Oxford, summarizes the intentions of the present and of the future systems somewhat as follows: "The present system is a good general school education, followed by two years of professional education, obtained in the intellectual atmosphere of Universities, where general rather than professional education is the rule; the future system is intended to be the best University education with a minimum of professional training." I have thought it worth while to refer to the Indian Civil Service because it offers the only example in Great Britain of an attempt to regulate systematically the preparation for an administrative career.

specimens. As there is no special school of political science there is no regular course in the subject, and some departments of it are often not represented on the lecture lists at all. The professors, readers, and lecturers in the faculty of law deal largely with political science; and the well-known names of Professors Dicey, Holland, Bryce, Sir F. Pollock, Sir William Anson, Sir William Markby, are all to be found in the lecture lists of the school of jurisprudence. There is a professorship of political economy in the University, recently vacant by the death of Professor Thorold Rogers, and now filled by the election of W. F. Y. Edgeworth. Lectures on political science, political economy, and economic history are given also by college tutors and lecturers in connection with the modern history school; and lectures on political philosophy (which does not differ much, if at all from political science, except in name) by college tutors and lecturers in connection with the school of *literæ humaniores*. The professor of moral philosophy, Prof. W. Wallace, who succeeded the late T. H. Green, occasionally lectures on social institutions or some such subject as a part of his course on ethics. It must be remembered that the giving of a formal course of lectures represents only a small part of a college tutor's teaching work, and that some professors are also college tutors.

The University prescribes or recommends certain textbooks. Lectures are to a great extent supplementary to the study of these. Work which corresponds to the American recitation, in which students are called upon to answer questions and invited to ask them, is not very usual, except where only members of the lecturer's own college are present. We should designate such a mode of teaching as a "catechetical lecture" or "informal instruction." It is more frequent in "pass" than in "honour" subjects. The large combined lecture has, as yet, proven less suitable for the more elementary teaching. It should be added that lectures occur, as a rule, twice or three

times a week, and last nominally one hour, but as many undergraduates have to come from one college to another, most lectures do not begin until about ten minutes after the hour.

This is the formal instruction which has been described. There is another side to instruction at Oxford. The chief part of a college tutor's work consists in hearing and criticising the essays and papers which he prescribes to his pupils. The essay writing is the most characteristic feature of Oxford education. As a rule, every undergraduate reading for an "honours" final school, such as *literæ humaniores*, jurisprudence or modern history,[1] brings at least one essay to his tutor every week. Lecturers occasionally set papers to those attending the lecture, and most colleges have college examinations at the end of the terms to test the term work.

The instruction, as before stated, is given partially by the University and partially by the colleges. It goes without saying that all the students of Oxford have equal privileges with regard to University instruction. On the contrary the instruction of the colleges is intended primarily for the members of each particular college. In most "honour" subjects, however, the colleges are now combined on a principle of reciprocity, *i. e.*, every college which provides a lecture in any school is entitled to send its men to other lectures in the same school, without any special fee. In some cases a small fee is charged to those coming from another college than that of the lecturer.

The advantages of Oxford education are in a certain measure open to others than students of the University. Some professors' lectures are "public lectures," and anyone who likes may attend. Indeed, cases have been known where professors who deal with subjects that have no examination value have lectured entirely or mainly to a

[1] Of course, I am not speaking of subjects such as mathematics, physics, natural science, etc., where the work is necessarily of a different kind.

non-academical audience. But this is, of course, an abnormal phenomenon. Students of the Oxford Association for the Higher Education of Women obtain leave to attend a large number of professional and college lectures along with the men. They pay a small fee. It is quite exceptional and contrary to custom for any college lecture to be attended by anyone not a member of the University (except in the case of the women students just mentioned, who can go in for most of the same examinations as the men, though the University gives them only a certificate and no degree). Neither the University nor the colleges give any recognition to members of other universities, simply as such. Thus a member of a German or an American university, even if a graduate, can only obtain the privileges of the University of Oxford by fulfilling the same conditions as if he had just come from school. Members of Cambridge and of Trinity College, Dublin, may become members of Oxford on easier terms, and a few English local colleges and Colonial universities are now "affiliated" to Oxford, so that students coming from them may count some portion of their previous academical course. The educational inhospitality of the English universities is on every ground much to be regretted. It is a falling away from the international character of the mediæval universities, and arose out of the peculiarity of the English Reformation, which cut off the Church of England alike from the Catholicism and from the Protestantism of the rest of Europe. In the English universities, ecclesiastical "tests" are now abolished (except for theological professorships and degrees in divinity), but the tradition of exclusiveness survives, though the original reason for it has disappeared.

The academical year consists nominally of four, practically of three terms, viz.: Michaelmas Term, from about the middle of October to the middle of December; Hilary, or Lent Term, from about the middle of January to the middle of March; Easter and Trinity, counting as one term for all educational purposes, from some time in April

(earlier or later according to the date of Easter) to some time in June. College lectures are given during eight weeks of each term, professional lectures generally for six weeks only. As a rule, at combined college lectures, attendance is ascertained at least occasionally and a report is made from time to time to the various colleges from which undergraduates come. It is less common for professors to ascertain attendance, and the audience fluctuates more. It is the business of the college tutor to advise his pupils what lectures to attend, what books to read, etc., and it is he who also endeavors to secure their regular attendance at lectures, whether his own or those of other lecturers. If necessary, college discipline can be brought to bear upon frequent defaulters, *i. e.*, the undergraduate who "cuts" lectures does it at his own risk; needless to say, it is sometimes done.

Every undergraduate, in residence, pays his college each term seven pounds sterling or more, *i. e.*, annually twenty-one pounds sterling or more, as tuition fee. This, as a rule, covers all expense of his tuition, unless he chooses to go to a private "coach" in addition. Whether he attends many or few lectures makes no difference. As a rule, an undergraduate is advised not to have more than about eight lectures to hear each week, exclusive of the time he spends with his tutor with essays, etc., or for informal instruction. But, of course, the number of lectures he attends will vary according to the stage at which he has arrived in his work, the lectures that happen to be available for the term, his need of help, or his power of working by himself, and so on. As to expense, it may be noted that tuition is a small part of the expenses of an Oxford or Cambridge undergraduate. One hundred and fifty pounds sterling per annum may be set down as the minimum at which a fairly careful man, at an average college, can get through his academical terms without depriving himself of many of the social advantages of the place. At some colleges the average expense would be lower, at others higher. A really able man who has been well

taught at school can make pretty sure of obtaining a scholarship, generally of eighty pounds sterling per annum.

As to work done in political science apart from professional and combined college lectures, it is impossible to give any precise information. It may be said that nearly every college tutor who has to do with preparing pupils for the final schools of *literæ humaniores*, modern history, or jurisprudence, is at some time or to some extent engaged in such teaching. Every tutor in these schools is assumed to have some general acquaintance with political and social science, and no undergraduate can read for any of these schools without having the subject brought before him. When it is understood that what in Oxford is called a "classical" education, includes, *e. g.*, political economy (though in most cases not very much of it), the liberal character of our educational system may be estimated. Whether a great University should not likewise do more for the advancement of learning in special studies, is a question that may very well be asked. At present, we have to a very large degree "the defects of our qualities." What is known as the "college system," *i. e.*, the system according to which education is chiefly cared for by the college instead of by the University, has its ardent admirers; but one result of it is that, for many purposes, where there might be one magnificent University, we have twenty small ones existing side by side.

I have annexed a list of the lectures on political and social science, open to all students of the University during the academic year of 1890–1891.[1]

D. G. RITCHIE.

Oxford University.

[1] For a brief but careful account of many of the most puzzling peculiarities of the two ancient English universities, I would refer the American reader to Baedeker's *Great Britain* (pp. 224–227, of 2d ed.). I have said nothing about Cambridge, as there are many differences from Oxford, both as to the examination system, and as to the arrangement for tuition. The system of study in Oxford is described in detail in a semi-official publication called *The Student's Handbook to the University and Colleges of Oxford*, which will be found less unintelligible than the official Examination Statutes; both are published at the Clarendon Press, Oxford.

LECTURES IN POLITICAL AND SOCIAL SCIENCE: UNIVERSITY OF OXFORD, 1890–91.

[Lectures marked * are open to all by special arrangement. The numbers after each lecture indicate the number of hours each week.]

FACULTY OF LAW.

Michaelmas Term, 1890.

T. Raleigh, M.A., Reader in English Law: Constitutional Law, Executive Government, etc. 2.

Sir William Anson, D.C.L., Warden of All Souls: Constitutional Law, The Courts. 2.

T. E. Holland, D.C.L., Chichele Professor of International Law and Diplomacy: International Law, The Rights of Nations in Time of Peace. 2.

Hilary Term, 1891.

T. Raleigh: Constitutional Law, Parliament, etc. 2.

T. E. Holland: International Law, Treaties and Embassy, Belligerency. 2.

Easter Term, 1891.

J. Williams, B.C.L.: The Law of the Constitution. 2.

A. Grant, B.A.: Questions in International Law. 2.

E. A. Whittuck, B.C.L.: Jurisprudence, Public and Private Law. 2.

FACULTY OF ARTS.

Michaelmas Term, 1890.—Honour Lectures: Literæ Humaniores.

W. Wallace, M.A., Whyte's Professor of Moral Philosophy: Social Institutions, chiefly in their Ethical Aspects. 2.

W. G. Smith, M.A.: Political Philosophy. 2.

D. G. Ritchie, M.A.: Political Philosophy. 2.

H. Rashdall, M.A.: Political Philosophy. 2.

Modern History.

D. J. Medley, M.A.: English Economic History. 2.

W. A. Spooner, M.A.: Political Philosophy. 1.

D. G. Ritchie: see above.

A. L. Smith, M.A.: Political and Social Questions. 3.

C. H. Roberts, B.A.: Political Science. 2.

Pass Lectures: Literæ Humaniores.

C. N. Jackson, M.A.: Political Economy. 3.

*W. Hawker Hughes, M.A.: Political Economy. 3.

*F. York Powell, M.A.: Political Economy. 3.

*E. M. Walker, M.A.: Political Economy. 3.
*J. A. R. Marriott, M.A.: Political Economy (with papers on Walker). 2.

Hilary Term, 1891.—Honour Lectures: Literæ Humaniores.

W. Wallace: Social Institutions, continued. 1.
H. D. Leigh, M.A.: Greek Political Ideas. 1.
W. G. Smith: Political Philosophy, continued. 2.
D. G. Ritchie: Political Philosophy, continued. 2.
C. H. Roberts: Political Philosophy. 2.

Modern History.

D. G. Ritchie: see above.
C. H. Roberts: Political Science. 2.
L. R. Phelps, M.A.: Political Economy, General Course. 3.

Pass Lectures: Literæ Humaniores.

S. Ball, M.A.: Political Economy. 3.
L. R. Phelps: Political Economy (Adam Smith). 3
*F. York Powell: Political Economy. 3.
*J. A. R. Marriott: Political Economy. 2.
*W. Hawker Hughes: Political Economy. 3.

Easter Term, 1891.—Honour Lectures: Literæ Humaniores.

A. Robinson: Aristotle's Politics (selected portions). 2.
D. G. Ritchie: Aristotle's Politics (subject matter). 2.

Modern History.

F. Y. Edgeworth, Professor of Political Economy: Informal Instruction.
S. Ball: Political Economy (questions and papers). Fee £1 2s.

Pass Lectures: Literæ Humaniores.

J. R. Marriot: Political Economy. 2.
S. Ball: Political Economy. 3.
F. York Powell: Political Economy. 3.
W. Hawker Hughes: Political Economy. 3.

PROCEEDINGS.

Seventh Session.

The Seventh Session of the Academy was held in Philadelphia on Thursday, the 12th of March, at 1520 Chestnut street, at 8 P. M.

The Secretary announced that the following papers and communications had been submitted to the Academy:

36. By Mr. Frederick B. Hawley, of New York, on "Preliminaries to the Discussion of Socialism."

37. By Miss Jane J. Wetherell, on "Freight Tariff in Hungary."

38. By Prof. J. W. Jenks, Indiana University, on "Land Transfer Reform." (Printed in the Annals, July, 1891.)

39. By Mr. William F. Willoughby, Bureau of Labor, Washington, on "Federal Statistics."

40. By Dr. Roland P. Falkner, on "Academic Instruction in Political and Economic Science in Italy." (Printed in the Annals, April, 1891.)

The President then introduced Mr. Hawley, who read his paper (No. 36) on "Preliminaries to the Discussion of Socialism."

Mr. Hawley called attention to the advisability of ascertaining what proportion wages now bore to other forms of income. Marx, who uses the term "surplus value" as inclusive of all forms of income except wages, affirmed that about half the value of the aggregate yearly product of the community was enjoyed by the laborers and the other half by the "capitalists," but he has nowhere attempted any satisfactory statistical proof of his assertion.

As Marx lived and wrote in Europe, it is fair to assume

that he intended this ratio as applicable to European conditions. In America, therefore, on account of our higher rates of wages and smaller amount of capital *per capita*—the ratio would be more favorable to wage receivers—say 60 per cent. to wages and 40 per cent. to capital.

Mr. Hawley, from such investigations as he has been able to make, inclines to the belief that Marx is practically correct in his assertion. Among those who have contended to the contrary he instances Mr. Atkinson, who, in his book, *The Distribution of Products*, arrived at the somewhat suspicious result that capitalists obtained only 5 per cent. of the total product, the remaining 95 per cent. going as wages to the laboring classes. While commending Mr. Atkinson's method, which was by means of census and other statistics to ascertain the total yearly product of the United States, and the total amount paid in wages, and subtracting the latter from the former to obtain the share of the capitalist, Mr. Hawley pointed out that Mr. Atkinson had included no values but those of material commodities in his yearly product. When the probable value of personal services and of the uses of wealth, such as shelter, etc., is added, we will have a division of just about 60 per cent. to labor and 40 per cent. to capital.

Mr. Hawley then stated his objections to the residual theory of wages by means of which President Walker endeavors to show that the laborers' share of the total product is increasing both absolutely and relatively. Mr. Hawley contended that as the rates of interest and profit decline the aggregate of interest and profits augments, because of the larger amount of capital that finds employment at the lower rates. The theoretical conclusion is corroborated by the fact that in countries like England, where the rates of interest and profits are low, their aggregates are enormous, while wherever, as in Turkey, these rates are high, so little capital finds employment that the aggregates of interest and profit are very small.

He also pointed out that the purchasing power of money

wages does not increase as rapidly as the purchasing power of other money incomes, because the food and coarse manufactures consumed by the poor cannot, owing to the law of diminishing returns, be cheapened as rapidly as the more highly wrought articles consumed by the rich. It thus appears that the Socialists are correct in asserting that the laboring classes receive now only about half of what is produced, and that the tendency is for their share to decline as civilization advances and wealth accumulates.

But it must not be too hastily assumed that everything that tends to equalize incomes is advantageous to society. So far as the levelling process weakens the motive which leads men to labor and produce, it defeats its own purpose by lessening the amount to be divided. But, ignoring this point, an ideal distribution must propose to itself two irreconcilable purposes: It must apportion the product so as to satisfy needs in proportion to their intensity, and it must also satisfy needs according to their quality without regard to their intensity. It must seek, that is, not only the greatest good of the greatest number, but the highest development of selected individuals.

The paper was discussed by W. H. Harned, Miss Musson, Dr. Doucet, Mr. Charles L. Serrill, Mr. S. W. Cooper, Professor Giddings, and Mr. Hugo Bilgram.

The paper on "The Rights of Citizens and the Treatment of Criminals" (No. 32), by Rev. C. E. Walker, together with brief rejoinders by the Hon. R. Brinkerhoff, President of the Ohio State Board of Charities and Corrections, and Major R. W. McClaughry, Superintendent of the Pennsylvania Industrial Reformatory, were read by the Secretary.

EIGHTH SESSION.

The Eighth Session of the Academy was held in Philadelphia, Friday, the 17th of April, at 1520 Chestnut street, at 8 P. M.

Papers had been submitted to the Academy as follows:

41. By Mr. Emory R. Johnson, of Baltimore, on "The River and Harbor Bill."

42. By Professor E. P. Cheyney, of the University of Pennsylvania, on "The Third, *i. e.*, the Social Revolution."

43. By Mr. E. P. Oberholtzer, of the Philadelphia *Evening Telegraph*, on "American Forms of the Referendum."

44. By Professor A. Loria, of the University of Siena, Italy, on "Economics in Italy."

The President, E. J. James, then introduced Mr. Emory R. Johnson, of Johns Hopkins University, who read his paper on "River and Harbor Bills." (No. 41.)

In his address, Mr. Johnson traced the history of river and harbor legislation up to the River and Harbor Bill of 1890. The amount appropriated by this bill is $24,903,295, all to be expended on works declared "worthy" by the United States engineers. He then compared the policy of the United States with that of England and France. In England, the Harbor Department of the Board of Trade has general supervision of rivers and harbors, but works are regularly constructed either by municipalities or by "trusts"—individual corporations, which sometimes receive aid from the government. The chief advantages of the English system are: Only important works are begun, and they are quickly completed. French river and harbor improvements are purely government enterprises, though most works, as with us, are executed by contractors. The two important features of the French system are the wide discretionary power given the executive, and the plan of making improvements *in toto* instead of little by little, as we do. The plan of the United States is to begin simultaneously a large number of works. Appropriations are made sufficient only to begin a work, the continuance of which depends on the action of future Congresses. With five exceptions, contracts cannot be let for completing the work, but for such part of the work only as the money appropriated will pay for. Coming finally to the future policy of the United States, Mr. Johnson held that criti-

cism should aim to lessen log-rolling and to lead to the adoption of a wiser manner of making improvements, but that care should be taken not to underestimate the returns brought by improvements.

The discussion of the paper was opened by Mr. John L. Stewart, who was followed by Professor S. N. Patten, Professor R. T. Ely, and others.

NINTH SESSION.

The Ninth Session of the Academy was held in Philadelphia, Friday, the 15th of May, at 1520 Chestnut street, at 8 P. M.

Papers had been submitted:

45. By Professor Simon N. Patten, on "The Economic Basis of Prohibition."

46. By Mr. E. W. Ernst, on "City Government."

47. By Mr. Leo S. Rowe, on "Ground Rents in Paris," and,

48. "Railway Passenger Rates in France."

Mr. Oberholtzer then read his paper (No. 43) on "American Forms of the Referendum."

The referendum is commonly thought of as a political institution peculiar to Switzerland. It is there truly that the name has come to have its present signification, but it seems to have been generally overlooked that in the United States, both in the State and the municipality, we employ, and in New England have employed since the Revolution, this same popular political principle. The referendum can be defined as the submission to all voting citizens for their ratification or rejection constitutions, constitutional amendments, and laws which, however, have first been passed upon by the people's representatives in legislature or in convention. Of the thirteen original States only two submitted their first constitutions to popular vote. None of the others followed their example until New York led the way in 1821. In the meantime, Missis-

sippi and Missouri, when they came into the Union, brought with them constitutions which had received the direct popular approval. To-day the people of not more than one or two States in the Union would be likely to be denied the right to pass upon the form and frame of their government.

From this habit of referendum in the case of new constitutions grew up naturally the convention referendum and the amendment referendum. It is now the uniform process in the States for the people to be directly consulted as to whether a convention shall be called to frame a new constitution or to make radical alterations in the old one. About 1818 the referendum on constitutional amendments, proposed by the legislature, began to come into favor, and now—though Vermont and New Hampshire still amend by convention only—in all others except Delaware the people vote at the polls upon every amendment proposition which the legislatures may submit. These have come to include much more than formerly, since the State constitutions have been enlarged into codes, as witness prohibition amendments, the lottery amendment in Louisiana, and others on subjects at one time left alone to the legislature and not judged suitable to be embraced in a constitution. Besides these referendums on laws disguised as amendments, there are others which have no such disguise. There have been in several States referendums on the location of the State capital. In Pennsylvania the constitution of 1873 says that the capital may not be removed from Harrisburg without a popular vote.

In several Western States and in New York it is declared in the constitution that laws for the contraction of debt, except those specified in the constitution, shall be submitted by the legislature. Another referendum found its way into the constitutions mainly during the bank excitement. It appeared first in Iowa in 1846, and consists in the submission of all acts chartering banks and banking associations

to the people. In three Western States the State tax-rate cannot exceed a given figure except the consent of the people be secured. There are other referendums in different States: Woman suffrage in Colorado whenever the legislature chooses to submit the question; the sale or lease of a canal in Illinois; sale of school lands in Kansas; location of State asylums, penitentiary, and State university in Wyoming, etc.

In the municipality, especially in the West, the people have important rights of referendum. County seats and county boundaries can only be changed on popular vote. There are debt and tax limitations in cities, counties, and other political subdivisions beyond which the authorities may not go unless the people agree.

The newest and most interesting municipal referendum we find in California and the State of Washington, where city charters and all amendments thereto are submitted for popular approval or rejection. This is the first appearance of anything like republican government in our American cities, and it may be the step toward a much-needed and effective reform. In April, 1887, the people of California voted upon and accepted an amendment to the constitution which took city charter building out of the hands of the legislature, and Washington has followed the example.

The referendum has become an issue in the communal politics of Belgium, and here, as there, a devotion to the institution as a means to political reform is developing which may lead to more important results than any which yet have been attained.

Professor Patten's paper on "The Economic Basis of Prohibition," which appears in full in this issue, was also read by the author, and discussed by Dr. Foote, Mr. Hugo Bilgram, and Professor F. H. Giddings. The latter also touched upon some points in the paper which had been read by Mr. Oberholtzer.

PERSONAL NOTES.

AMERICA.

Columbia.—John Bassett Moore, third assistant Secretary of State, has been elected to the newly-established chair of International Law in Columbia College, and will enter upon the duties of that position at the opening of the next academic year. He is a native of Delaware, having been born at Smyrna, in that State, in 1860. His father was a physician. Mr. Moore received his early education at private schools at Fulton, Del. In 1877, when sixteen years of age, he went to the University of Virginia, at Charlottesville, where he remained for three years, devoting his time to general history and literature, moral philosophy and logic, and the classics. In the autumn of 1880 he was registered as a student at law in Wilmington, Del., in the office of Edward G. Bradford, a leading member of the bar in that city. Here he pursued the study of the law for three years, as required by the rules governing the profession in Delaware, and in the fall of 1883 was admitted to the bar, and began to practise in Wilmington.

In July, 1885, he was given a temporary commission in the department of State for six months, under the civil service law, as a clerk, at a salary of $1200, which commission was made permanent in the following January. For some time Mr. Moore was associated with Mr. Adee in the office of third assistant secretary, and with Dr. Wharton, the solicitor, in the distinctively legal branch of the work. Upon the death of Mr. Hunter, the second assistant secretary, in August, 1886, Mr. Adee was appointed to the

office thus left vacant, and Mr. Moore was promoted to the position of third assistant secretary, which he now holds. When the fisheries conference met in 1887 Mr. Moore was chosen to act as the secretary on the American side, and discharged that function until the conclusion of the conference in February, 1888. He also participated in the Samoan conference between the Secretary of State and the British and German ministers in Washington in June and July, 1887, and prepared all the protocols of that conference as they have since been published.

In performing the duties of his office he has pursued his researches in many directions, and has written and published several essays and monographs on questions of international law. In 1877 he published a work entitled *Report on Extraterritorial Crime and the Cutting Case*, the immediate occasion of its composition being the question that arose between the United States and Mexico in 1886 in regard to the claim of the latter to try and punish a citizen of the United States for the publication in the United States of a libel on a Mexican. Mr. Moore is also the author of a report to the International American Conference on the subject of extradition, which contains a statement of the law and practice on that subject in many countries, and which has recently gone through a new edition, containing, besides the original matter, returns of all cases under the treaties. By far his most important work, however, is the one entitled, *A Treatise on Extradition and Interstate Tradition*, which contains the treaties and statutes of the United States relating to extradition and much other valuable matter (Boston Book Co., 1891).

Professor Edwin R. A. Seligman, of Columbia College, has been made Professor of Political Economy and Finance in that institution. He was born and educated in the same city in which he has achieved his reputation as an instructor and author. Born in 1861 in New York City, he was taught at home by the famous juvenile writer, Horatio

Alger, Jr. He attended Columbia Grammar School, and afterward Columbia College, from which he graduated in 1879. He then went abroad, and studied political science for three years at the Universities of Berlin, Heidelberg, Geneva, and at the École des Sciences Politiques in Paris. On his return to America, in 1882, he attended the law school and the school of political science at Columbia College, taking the degrees of LL.B. and Ph.D. in 1884. In 1885 he was made Lecturer on Political Economy in the School of Political Science, Columbia College; in 1888, he was made adjunct Professor of Political Economy, and in 1891 he was made Professor of Political Economy and Finance. He is one of the editors of the *Political Science Quarterly*. His chief writings have been as follows:

Railway Tariffs and the Interstate Commerce Law, 1887.
Chapters on the Mediæval Guilds of Europe, 1887.
Finance Statistics of the American Commonwealths, 1889.
The General Property Tax, 1890.
The Taxation of Corporations, 1890.

Cornell.—Jeremiah W. Jenks has been appointed Professor of Political, Municipal, and Social Institutions at Cornell University. He is a graduate of the University of Michigan, class of 1878, and of the University of Halle (Ph.D., 1885, *Magna cum laude*). Professor Jenks was born at St. Clair, Michigan, in 1856. He spent most of his boyhood in the thinly settled parts of Michigan, on Lake Huron. Aside from two years in the St. Clair High School, his early education was obtained in a district school. After graduating from college, he spent one year in Mt. Morris College as Professor of Language and Literature. Here, besides Greek, Latin, English, etc., he was assigned a class in political economy, though he had never studied it in college. His interest in the subject, and his special study of economic subjects, dates from this time. After studying law at Port Huron for a short time,

he was admitted to the bar, but, instead of practising, returned to Mt. Morris, where he remained for two years as teacher of Greek, Latin, and German. On his return from Germany, in 1885, he taught in the Peoria, Ill., High School one year, was then elected Professor of Political Science and English Literature in Knox College, and, in 1889, to the Chair of Economics and Social Science in Indiana State University, at Bloomington, which position he held until accepting the call to Cornell.

The results of his studies into the workings of the Salt Association and of the Whiskey Trust, afforded by visits to his Michigan home and his Peoria residence, were published in the *Political Science Quarterly* for March, 1888, and June, 1889. He has written several articles for the magazines and has contributed to the leading newspapers. His other works are:

Henry C. Carey, als National-ökonom., Jena, 1885.
Road Legislation for the American State, Baltimore, 1889.
Die Trusts in den Vereinigten Staaten von Amerika, in "Jahrbücher für National-ökonomie und Statistik," Jena, 1891.

Leland Stanford, Jr.—Orrin Leslie Elliott, Secretary and Registrar of the new University at Palo Alto, California, will offer partial courses in economics during the coming year. For the present no professor of political and social science will be appointed. Dr. Elliott was born at Centreville, New York, in 1860. He obtained his preparatory training at Rushford (New York) Union School, and then entered Cornell University, from which he graduated (Ph.B.) in 1885. During the following year he was Fellow in History and Political Science, and since that time has been Instructor in English in the same institution. For the present academic year he has also been Assistant Registrar and President's Secretary. He received the degree of Ph.D. from Cornell University in 1890.

Washington, D. C.—Dr. Amos G. Warner, recently Associate Professor of Economic and Political Science in the

University of Nebraska, has been appointed by President Harrison Superintendent of Charities for the District of Columbia, and entered upon his duties the 10th of April, 1891. The office of Superintendent of Charities was created by an Act of Congress, approved August 6, 1890, and Dr. Warner is the first incumbent. The statute provides that the Superintendent shall formulate a plan for the organization and coördination of the charities of the District; shall advise regarding the appropriations for their support; shall supervise the expenditure of all moneys appropriated for charitable objects, and shall fully investigate and report upon all institutions receiving Federal aid. The annual appropriations for the institutions coming under his supervision have heretofore amounted to about $160,000.

Dr. Warner was born December 21, 1861, at Elkader, Iowa. He was educated in the public schools of Iowa and Nebraska. He fitted for college in the preparatory department of the University of Nebraska, and graduated from that institution with the degree of Bachelor of Letters in 1885, having taken a course especially strong in history. In the autumn of 1885 he entered the Johns Hopkins University as a graduate student in the department of history and political science. In 1886 he was made a fellow in that department. March, 1887, he resigned his fellowship to undertake the work of General Agent of the Charity Organization Society, at the same time continuing his post graduate work in historical and political science. In 1888 he received his degree of Ph.D. from the Johns Hopkins, at which time he presented as his thesis a paper entitled, "Three Phases of Coöperation in the West." This thesis has been published by the American Economic Association as No. 1, Vol. II., of their publications. In March, 1889, he severed his connection with the Charity Organization Society to accept the place of Lecturer in Economic and Political Science in the University of Nebraska. In June of the same year he was

made associate professor, which place he retained until his recent appointment.

Besides his thesis he has published "Sketches from Territorial History" (*Publications of the Nebraska State Historical Society*, Vol. II.); "Wild-cat Banking in Nebraska" (*Overland Monthly*); "Leplay's Studies in Social Phenomena" (*Popular Science Monthly*); "Railroad Problems in a Western State" (*Political Science Quarterly*); "Concerning Corporation Law" (*Popular Science Monthly*); "Scientific Charity" (*Popular Science Monthly*); "Our Charities and Our Churches" (*Proceedings of the National Conference of Charities and Correction*); "Notes on the Statistical Determination of the Causes of Poverty" (*Publications of the American Statistical Association*); "Some Experiments on Behalf of the Unemployed" (*Quarterly Journal of Economics*).

University of Pennsylvania.—Dr. Roland P. Falkner, Instructor in Statistics and Accounting in the Wharton School of Finance and Economy, has been elected to the newly established Associate Professorship of Statistics in the same institution. Dr. Falkner is a graduate of the Philadelphia Central High School, and of the Wharton School of Finance and Economy, class of 1885. He studied abroad for three years at the Universities of Paris, Berlin, Leipzig, and Halle, taking the degree of Ph.D. at the latter institution. He was appointed to the position of instructor in the University in 1888. He has been for one year associate editor of the ANNALS OF THE AMERICAN ACADEMY. His writings have been:

Arbeit im Gefängniss, Jena, 1888.

Prison Statistics of the United States, Philadelphia, 1889.

Statistics of Private Corporations, in publications of the American Statistical Society, June, 1890.

Translation into English of Meitzen's "Geschichte Theorie und Technique der Statistik," published by the AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Philadelphia, 1891.

Dr. A. B. Woodford has been appointed Instructor in Political Science in the Wharton School of Finance and Economy. For an account of Dr. Woodford's academic career, see ANNALS OF THE AMERICAN ACADEMY, July, 1891.

GERMANY.

Berlin.—Dr. K. Oldenberg, who, since 1888, has been assistant to Professor Schmoller, at Berlin, entered the University of Berlin as Privat-docent in January of this year. He was born in 1864 in Berlin; was a University student in Berlin and Tübingen for six years, until 1888, when he received his degree. His graduating thesis was on the subject, "Das deutsche Bauhandwerk der Gegenwart." Other writings are:

Der russische Nihilismus von seinen Anfängen bis zur Gegenwart. Leipzig, 1888.

Studien zur Rhenisch Westfälischen Bergarbeiterbewegung. Leipzig, 1890.

Die Ziele der deutsche Socialdemokratie. Leipzig, 1891.

Greifswald.—Dr. C. J. Fuchs has accepted a call to Greifswald as extraordinary professor in the faculty of Law and Political Science. In addition to the monographs mentioned in a previous number of the ANNALS,[1] Professor Fuchs has given to the public the following:

Der Warenterminhandel, seine Technik und volkswirtschaftliche Bedeutung. Leipzig, 1891.

Zur Geschichte der gutsherclich-bauerlichen Verhältnisse in der Mark Brandenburg., in the "Zeitschrift der Savigney Stifting u. s. w." Weimar, 1891.

Der Untergang des Bauernstandes in Schwedisch-Pommern. An appendix to "Baltischen Studien." Stettin, 1891.

Leipzig.—Dr. Gerhart v. Schulze-Gaevernitz, who has recently become Privat-docent at Leipzig, was born at Breslau in 1864. He attended the Gynasium at Breslau,

[1] July 1, 1890, p. 142.

and later at Heidelberg, finishing his course at the latter institution in 1882. From that time until 1886 he was a student of law and political economy successively at Heidelberg, Berlin, Leipzig, and Göttingen. He has travelled in England, Belgium, France, and Italy, and has spent three years in government service. He is the author of the following works:

Zum socialen Frieden. 2 Vols. Leipzig, 1890.
Several articles in "Sächsische Wochenblatt," of which he is statistical editor, 1890 and 1891.
Articles in Schmoller's "Jahrbuch für Gesetzgebung u. s. w." 1889.
An article, "Ueber die Geltung des Haftpflichtgesetzes neben dem Unfallversicherungsgesetz." Wien, 1889.

Dr. Karl Lamprecht, who became at Easter, 1890, ordinary Professor of History and Economics at the University of Marburg, has been called to the chair of History at Leipzig. Although nominally Professor of History only, his lectures will deal, as heretofore, largely with its economic phases. A biographical notice appeared in the October (1890) number of the ANNALS.

Munich.—One of the most important of the recent changes in chairs of Political Economy is that by which Professor Lujo Brentano has become established as ordinary Professor of Political Economy at Munich. Professor Brentano was born in 1840 at Aschaffenburg, Bavaria, and studied at the Universities of Dublin, Heidelberg, Munich, Würzburg, and Göttingen. He travelled in England in 1868, where he took advantage of the opportunity to make a close study of the conditions of the laboring classes in England. He became Privat-docent at Berlin in 1871, and after a second journey to England in the following year, was appointed extraordinary Professor at Breslau, where he became ordinary Professor in 1873. He accepted a call to Strassburg in 1882, to Vienna in 1888, and to Leipzig as Professor of Political Economy in 1889. From 1877 to 1880 Brentano was joint-editor with Holtzendorff of the

Jahrbuch für Gesetzgeburg, Verwaltung, und Volkswirtschaft, the periodical which is now conducted by Gustav Schmoller. From his long list of writings we select a few, which will sufficiently indicate their general character:

Ueber J. H. v. Thünens naturgemässen Lohn und Zinsfuss im isolirten Staate. Göttengen, 1867.

Das Industrial-Partnership System. Augsburg, 1868.

Die Arbeiter Gilden der Gegenwart. 2 vols. Leipzig, 1871–72.

On the History and Development of Guilds and the Origin of Trades Unions. London, 1870.

Ueber das Verhältniss von Arbeiterlohn und Arbeitszeit zur Arbeitsleistung. Leipzig, 1876. (Recently translated into English by Porter Sherman, of New York.)

Meine Polemik mit Karl Marx. Berlin, 1890.

Das Arbeitsverhältniss gemäss dem heretigen Recht. Leipzig, 1877. (Recently translated into English by Porter Sherman, of New York. G. P. Putnam's Sons, 1891.)

HOLLAND.

Amsterdam.—On the 12th of December, died at Heidelberg, after a long illness, Anthony Beaujon, Professor of Political Economy and Statistics at the University of Amsterdam, and Director of the Statistical Institute at that place. Though it had been only a short day for this eminent scholar, who was in his thirty-seventh year when death took him away from his work, yet Beaujon had been able to make his name known in scientific spheres, even beyond the limits of his small country. A short sketch of his life and works may, therefore, properly be placed here.

Born on the 28th of January, 1853, Beaujon entered upon his studies of jurisprudence in 1870 at the Leiden University, and was made acquainted, for the first time, under the excellent leadership of Professor Vissering, with political economy and statistics, to the study of which he was afterward to consecrate his life.

His great zeal and clear sagacity procured him, even before having finished his studies, an appointment in the

Finance Department, where Beaujon labored in different capacities from 1875 to 1884. It was there that, in spite of his extensive labor at the ministry, he was able to find time to compete for the prize essay on the history of the Dutch sea fisheries, offered in 1882 by the Committee on Preparation of the International Fisheries Exhibition, to be held in London in 1883. This excellent paper was crowned, and, under the title "History of the Dutch Fisheries," it attracted general attention in the Netherlands, as well as in foreign countries, to the promising young writer, who thus made himself known as an able statistician and economist. By means of very carefully and completely collected materials, it was proved by Beaujon that protection, which, it was claimed, would support our fisheries in their competition with those of foreign countries, had become, by that very means, the cause of their decay; and that our sea fisheries came to a flourishing state only after the government retreated and left them alone in the competition which they had to meet.

When the Statistical Institute was founded by the Statistical Society in Amsterdam in 1884, and at the same time an extraordinary professorship in statistics was created, the prize essay, already referred to, together with some smaller essays from his hand, published earlier in various periodicals, caused Beaujon to be universally thought the right man for the new chair and for the position of Director of the Institute.

In May, 1884, he entered upon the duties of his double position with an admirable speech on social mathematics, in which, as if with a presentiment that in another year he would be offered the chair of Political Economy, which was to be made vacant by the resignation of Professor N. G. Pierson, he defined his position clearly on the principal questions of statistics, as well as on the important question of method in political economy.

Holland has not known a conflict between economic schools, such as has occurred in Germany. Although

nearly all its learned economists belong to that which Roscher styles the "isolating" school, they acknowledge the good work done by the historical school, and have tried to develop the science without meddling in this quarrel. This was also Beaujon's point of view. He recognized the one-sidedness of the deductions of both classical and historical economists. Beaujon aspired to harmonize the results of his deductions with reality. He generally succeeded, thanks to his extraordinary powers of logical reflection and his plainness of expression.

The Statistical Institute was, under his management, made to further this idea, as may be seen by several interesting articles published in the *Bijdragen van het statistisch Instituut.* Besides these *Bijdragen*, which were edited by Beaujon, and appeared at irregular intervals, the Institute published the *Jaarcijfers*, an annual statistical review, published at first in a somewhat different form by Mr. de Bruiju Kops, Member of the House of Representatives, and bearing some resemblance to the renowned statistical abstracts of R. Giffen.

Deeply convinced of the importance of an international comparison of statistical data, Beaujon formed as intimate personal relations as possible with foreign statisticians at the Statistical and Demographic Congresses, and he was among the founders of the "Institut international de statistique." He was Honorary Member or Fellow of the statistical societies of France, Belgium, and England. His statistical labors did not, however, hinder him from giving himself with great energy to the study of political economy. Although on many points his views were in conflict with prevailing social and political theories, his antagonists were compelled to admit the cleverness with which he defended his convictions.

In 1888 he became a member of the council which has charge of the publication of the *Dutch Economist*, a periodical that has great influence in matters of political economy in Holland. His recent studies have appeared in this

periodical and in Professor Gides's *Revue d'Economie Politique*. After a long and very painful illness, he died in December of last year. We cannot help feeling, as we think of him, that an excellent man and an eminent scholar is lost to his family, to his friends, and to science.

C. A. VERRIJN STUART.

Amsterdam, April, 1891.

The principal works of Beaujon are:

Een tolverbond met België (A Commercial Union with Belgium). Economist, 1881.

Nog iets over weelde (On Luxury). Economist, 1882.

De strafwetgeving omtrent Cedelarÿ (Criminal Law Concerning Beggary in Holland). Bÿdragen van Mr. Boer, C.S.

De surtaxe d'entrepôt in Duitschland (The Surtaxe d'entrepôt in Germany). Economist, 1881.

Een bladzijde nit de geschiedenis van het protectionisme in Nederland (A Few Pages of the History of Protectionism in the Netherlands). Gids, 1882.

History of the Deutch Sea Fisheries, 1883.

Traités de commerce et réciprocité. Congress à l'occasion de l'Exposition internationale et colomale à Amsterdam, 1883.

Sociale Wiscunde (Social Mathematics). 1884.

Le rapport entre les prix des subsistances et le mouvement de la population. 3ieme congrés de demographie. 1884.

Henry Fawcett. Mannen van Ceteekenio. 1886.

Nuptealeté depuis 1873. Quatrieme congrés de demographie, 1887.

Inder numbers. Bulletin de l'Institut internationale de Statistique. 1887.

Handel en handelspolitiek (Commerce and Commercial Politics). 1888.

Técondité des mariages aux Tayo-Bas. Journal de la Société de statistique de Paris, 1888.

Wistunde in de economie (Mathematical Method in Political Economy). Economist, 1889.

ITALY.

Genoa.—The death of Professor Jacobo Virgilio, who, since 1866, has been Director of the Superior School of Commerce (Scula Superiore di Commercio), at Genoa, Italy, occurred in February of this year. He was born

in Chiavari, in 1834, and took the degree of LL.D in 1856 from the University of Genoa. He entered the public service in 1860 as magistrate, but abandoned it almost immediately, and, in the following year, began his career as teacher in the Technical Institute of Genoa, where he remained ten years. In 1871 he became Professor of Maritime Law in the Superior Naval School of the same city. Many of the results of his unparalleled activity are to be found embodied in State Reports. His principal works were:

Principii di economia politica. 1867.
Delle emigrazioni transatlantiche degli italiani. 1868.
Il commercio indo-europeo e la marina mercantile. 1869.
Credito navale. 1877.
Le tasse marritime. 1877.
L'evoluzione nel campo economico. 1882.

Stefano Jacini, the eminent Italian economist and statesmen, who died recently, was born of a rich family at Casalbuttano, in the province of Cremone, in 1827. He began his academic studies at the University of Milan, and after attending different universities of Germany, he travelled in Europe and in the Orient. One of his best-known works, *La Proprietà fondiaria e le populazione agricole in Lombardia*, written while he was still young, was awarded honors by the "Società d'incorraggiamento di Scienze e Lettere," of Milan." He was Minister of Public Works during 1860–61, and again in 1866–67. After the political questions which had absorbed the attention of scholars, as well as of all others, during this period had been settled, economists and students began a closer investigation of economic and social conditions. Jacini was appointed chairman of the famous Agrarian Commission (Inchiesta Agraria) in 1881, and held this position until 1886. The reports of this commission, showing the miserable condition of the agricultural classes in all the Provinces of Italy, has exercised a strong influence on the direction of modern economic investigation in Italy. Jacini's good sense,

his profound knowledge, his long experience, the sincerity and elevation of his ideas, placed him among the leading men of Italy. His most significant works, aside from these reports, are:

La Questione di Roma al principio del 1863.

Due Anni di politica italiana dalla Convenzione di settembre fino alla literazione del Veneto per mezzo dell' alleanza italo-prussiana. Milan, 1868.

Sulle condizione della cosa publica in Italia dopo il 1870.

Sulle opere publiche in Italia nei loro rapporti collo Stato.

SWITZERLAND.

Basel.—Dr. Bernatzik, who is at present Acting Professor at Innsbruck, has been selected to fill the vacancy in the chair of Public Law at Basel, caused by the resignation of Professor Jellinek.[1] He was born in Mistelbach, Austria, in 1854, and was a student in the Universities of Vienna and Gratz. He took his degree in the latter institution in 1876, and entered the civil service in a judicial capacity. In 1885 his resignation was accepted and he became Privatdocent at Vienna, where he delivered lectures on the Public Law of Austria, until called to Innsbruck in 1890. He has written, besides smaller articles for the periodicals:

Rechtssprechung und materielle Rechtskraft. Vienna, 1886.

Die juristische Persönlichkeit der Behörden. Freiburg, 1890.

[1] See ANNALS OF THE AMERICAN ACADEMY, Vol. I. p. 678.

BOOK REVIEWS AND NOTES.

Reviews.

THE DOMINION OF CANADA: A STUDY OF ANNEXATION. A dissertation in part fulfilment of the requirements for the degree of Doctor of Philosophy in the School of Political Science, Columbia College. By WILLIAM BENFORD AITKEN, M.A. New York, 1890.

THIS monograph of one hundred and six pages consists of five chapters and a bibliography. The five chapters are entitled: Historical, Ethnical, Geographical, Legal and Industrial, Political.

The author professes to treat his subject according to the historical, comparative, and statistical methods. Of the three, he has employed the first most successfully, and the amount of history incorporated in the book is rather out of proportion to the size of the volume.

In the first chapter the author gives a very readable and accurate account of the discovery and settlement of Canada, pointing out very emphatically the influence of the Jesuits in colonization and their missionary activity among the Indians.

In the second chapter a contrast is drawn between the Teutonic and Romance races, illustrated by a somewhat vague comparison of the French Canadians with the English colonists in New England. The author describes the growth of the peculiar French-Indian dialects, and discusses briefly the problem of the relative increase of French and English. He expresses the opinion that the very large number of births among the French is more than overbalanced by the large migration from the British Isles and the United States. We find in the same chapter a detailed

summary of the different racial elements which compose the population, and a discussion of the motives and work of the Jesuits, of the relative importance of the different religious classes, of the relations of Church and State to each other and to education. The progress of the provinces in the establishment of common schools and universities, the prevalence of separate schools for Catholics and Protestants, the preponderance of the Catholics in the Province of Quebec, the extent to which religious prejudices influence the solution of all educational, political, and social problems: all these are discussed and compared with our own views and institutions.

We have in the third chapter a cursory account of the topography, climate, and products of each of the provinces; also a review of the history of the fisheries, and of the various treaties and conventions with the United States. The value of the cod and seal fisheries to us he seems not to have appreciated. The wonderful agricultural and commercial future in store for the great Northwest territories is stated quite forcibly, but it may be questioned whether enough importance is ascribed to the remarkable influence a great and prosperous population in the Northwest would have upon the petty jealousies and provincialisms of the older provinces.

The fourth chapter deals briefly with the sources and administrative provisions of the laws; discusses the extradition treaty with the United States, the currency, banks, post office, public debt, and taxation. Statistics are furnished bearing upon the extent and character of domestic and foreign commerce.

The last chapter contains a sketch of the constitutional history and the movements for independence and annexation. This is followed by an analysis of the present constitution and government, including a not altogether satisfactory comparison with our own Constitution and government.

Mr. Aitken thinks that there are but three alternatives

open to Canada if she discards her present government: 1. Imperial federation. 2. Independence and a new American Republic. 3. Annexation. The description of the first is perhaps as precise as the vague ideas of its advocates will permit. Beyond a certain optimistic view, the author does not venture to decide upon the probability or practicability of the adoption of this grand scheme. He leaves the reader to suppose that it is advocated more as a weapon to ward off annexation than because it possesses any assurance of successful operation. A very clear statement is given of the position occupied by the leading political parties with regard to the question of political independence. We are told that the "ethnic and religious differences retard the growth of independence and act as a drawback to annexation, for annexation is not likely to take place until after independence." The question of annexation is treated from the historical and legal standpoint rather than from the political or social. Annexation is a consummation which the author evidently would neither deplore nor enthusiastically welcome.

The monograph is inclined to be too cyclopædic, and not sufficiently broad and liberal in treatment. But slight attention is paid to the social side of the question—the habits, customs, and traits of the two peoples. No attempt is made to portray the prevailing political views and the drift of public opinion. Despite this and an occasional ambiguity and triteness in statement, the monograph will be acceptable to those who wish in a short space to obtain a comprehensive view of the historical and comparative bearings of the question.

CARL E. HOLBROOK.

Johns Hopkins University, Baltimore, Md.

THE UNEARNED INCREMENT: OR REAPING WITHOUT SOWING. By WILLIAM HARBUTT DAWSON, Author of "German Socialism and Ferdinand Lassalle," "Bismarck and State Socialism," etc. Pp. 156. London: Swan, Sonnenschein & Co., 1890.

MR. DAWSON, whose book upon *Bismarck and State Socialism* was reviewed in January last, has now brought out a short and extremely readable treatise upon the important subject of the *Unearned Increment.*

His object as stated in his Preface is, by "inquiry into the meaning and bearings of this still dignified phrase," to attempt to "take away something of its obscurity for the popular mind."

The author lays no claim to originality in his treatise; he does not present any "short and easy method" for changing institutions, customs and traditions which are the results of centuries of development and which are closely interwoven with the life and habits of the community; his wish is rather to point out those evils of the present system of land laws that are susceptible of remedy, and to show what would be the social benefits of such reform.

Upon a subject about which so much is written and spoken that is crude in thought and intemperate in expression, it is a relief to find a treatise in which the question is discussed so moderately and judiciously as it is by Mr. Dawson in the work before us. There are points upon which one may differ from the conclusions of the author, there are parts of his reasoning which may seem liable to attack, but the subject is fairly treated from the standpoint of the reformer, and much interesting and valuable information has been collected.

The title of the book might lead the reader to expect more of a theoretical and abstract discussion of the subject than he will find, but the great interest and the value of the book lies in the fact that it deals with concrete phenomena as observed mainly in England, where the difficulties of the main question are seriously complicated by

the ingeniously inequitable condition of the laws in regard to the ownership and taxation of land. With all that Mr. Dawson says about the English land system and its grotesque anomalies, few readers—not English landlords—will disagree. It is almost dangerous for an American to read the account lest his thankfulness for the comparative excellence of the laws of his own land lead him in self-complacency to shut his eyes to their many defects.

In Mr. Dawson's illustrations, drawn from American phenomena of land ownership, he follows generally the statements of Henry George in *Progress and Poverty*, and those of A. R. Wallace in *Land Lessons from America*, but adds to them some interesting information derived from British consular reports. One is a little surprised to find, on page 19, statistics of rapid increase of land values in Sioux City, Iowa, and Salina, Kansas, cited in close connection with statistics from Boston, Mass., as if the conditions of increase in the "boom" towns were not abnormal and unusual; but in a later chapter on land speculation the phenomenon is more fully described and commented upon, and the passage from Wallace in regard to these towns, to which reference had been made, is quoted at length.

On page 7, the author states that "isolated writers, several centuries ago, ... saw that the larger the tax claimed by the landlord for the use of the soil, the worse became the position of the cultivator and the lot of the laborer," to which he appends as a foot-note a quotation from Fawcett, that "the more there is allotted to labor the less there will remain to be appropriated as rent." It is hard to see the exact bearing of the quotation upon the statement of the text, or why Prof. Fawcett's statement illustrates the views of isolated writers centuries before; one is led to wonder whether the printer has not misplaced the note.

The method pursued by the author may best be indicated by stating his own divisions of the subject. The

titles of the chapters will also convey an idea of the slightly rhetorical style that has been adopted.

The work is divided as follows: "The Penalties of Progress;" "Private Gain at Public Cost;" "The Rent Screw;" "The Land Monopoly;" "Land Speculation;" "Overcrowding in Large Towns;" "End or Mend;" "Mines and Mineral Royalties;" "Half Remedies;" "Root and Branch."

The conclusions attained may be most fairly stated in the words with which he himself sums up his work (pp. 155, 156):

"There are few social questions the study of which does not bring us ultimately to the land, and generally that destination is reached very soon. Whatever class of people the reformers of to-day may seek to benefit and to elevate—be it the rack-rented and sweated toiler of the city, the husbandman who looks longingly back upon the better days of yore, or the agricultural laborer who weighs the possibilities of a manhood to which, from no fault of his own, he has so lately and so slowly attained—the final *crux*, the last and highest stone of stumbling, is the land.

"Let us not deceive ourselves. Free land, the disintegration of *Latifundia*, allotments, peasant proprietary, leasehold enfranchisement are all desirable and excellent so far as they go. But they will not settle the land question. So long as society is punished for its progress, so long as the fair fruits of civilization, of enlightenment, of public enterprise and individual exertion are appropriated by the landowners, it cannot be said that the gravity and deep significance of this question are comprehended."

. . . . . .

"But the diversion of the unearned increment into public channels would be a measure of social benefit, for instead of being monopolized by the few who do not create it, it would be shared by the many who do. Such a distribution of the growing wealth of the community would not only be an act of social justice; it would be productive of manifold positive blessings. Everywhere, in town and country, the pressure of taxation would be relieved. Industry and commerce would be emancipated from many harassing fetters. Honest enterprise would be encouraged. Men and women, born into a world already appropriated, destined here to live, would be able to breathe more freely. Society would henceforth labor to benefit, instead of to injure itself. In the factory, in the workshop, and by the plough, the busy sons of toil would labor more gladly, knowing that

the wealth that they produced would fall in larger measure to themselves and to their children, affording comfort, leisure, and enjoyment now unknown. There would, in fine, be laid the foundations of a new and higher social life, whose crowning characteristic and whose glory would be greater prosperity and happiness—greater and also truer, because more general."

Even those who do not agree with Mr. Dawson in regard to the possibility or expediency of all the changes he would recommend, will certainly sympathize with him in his generous aspirations for the future of humanity.

HENRY FERGUSON.

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LUXURY. No. 24, Social Science Series. By EMILE DE LAVELEYE. London: Swan, Sonnenschein & Co., 1891.

M. LAVELEYE'S purpose, in this book, is to show that luxury is "pernicious to the individual and fatal to society." He begins wisely by defining. *A luxury* is to him "anything which does not answer to our primary needs and which, since it costs much money to buy and consequently much labor to produce, is only within reach of the few;" or again, "everything is a luxury which is at the same time dear and superfluous." He then sets forth the causes of luxury, finding them—under the lead of Baudrillart's "Histoire du lux"—in three natural and universal sentiments in man—"vanity, sensuality, and the instinct for adornment." He then, still following Baudrillart, adds a fourth—"the desire for change." This analysis of causes is not at all logical, for the four heads are not severely separated, and the first—sometimes called vanity, sometimes ostentation—is continually coming to the front. In truth, a searching analysis must reduce all these causes of luxury, as distinct from something commendable, to one—ostentation—as even the writer's slovenly discussion makes apparent. The desire for sense-gratification is instinctive and animal; the instinct for adornment is also primal; it

is only as, in the consideration of these, the thinking animal man introduces comparison, and that eager craving for monopoly which change of fashion caters to, that true luxury arises in the ostentatious desire to exclude all others in sole possession.

The writer next comes to his thesis—"luxury is unjustifiable"—which leads to a larger elaboration of his definition. He agrees with Bastiat that "to maintain that wealth consists of labor is nothing but a *Sisyphism*, or making work for work's sake." "To dig a hole and fill it up again, to embroider shirt-fronts or set precious stones, is not really to work, for it is not productive of the least utility." "Is an object worth the pains it would require and the time it would take for me to make it myself? If so, it is not a luxury." It will be seen that M. Laveleye considers that alone as wealth which contributes to general well-being, but when he comes to apply his definitions in his investigation of the effect of luxury upon society he fails to adhere to them. He makes his application from three points of view: "First, as a question of morals, for the individual as such: Within what limits is the effort to satisfy wants favorable to the normal development of human faculties? Secondly, as a question of economics: To what extent does luxury serve to advance or hinder the accumulation of wealth? Thirdly, as a question of right and justice: Is luxury compatible with the equitable distribution of products and with the principle that each man's remuneration should be in proportion to the amount of useful labor accomplished by him?"

All true economists will agree with the writer that wasteful expenditure for the sake of ostentation is adverse to the increase of individual well-being and to the accumulation of salutary riches. Yet all will not accept his conception of *useful* labor. But M. Laveleye unconsciously plays fast and loose even with the definitions that we can accept, and when he condemns luxury apparently strikes at much which his definitions do not cover. We fear that

his condemnation would take away from the individual libraries, paintings, beautiful houses, musical culture, and that great educator and civilizer—travel. The higher nature of those who are the leaven of the race would starve while waiting for the State to follow M. Laveleye's suggestion and furnish these as it furnishes parks and drinking fountains. Travel, indeed, the State can never furnish. The writer seems to be touched by the theories of the socialistic levellers of the Old World, and apparently fails to see that, for the progress of society, we must not so much level down as grade up. It is not true, as he maintains, that the desire for the necessaries of life will be strong enough to stimulate men to work. Practical socialists, who have studied men and not merely theories, know that the lack of ambition, of abstinence, and of precision on the part of the working classes are largely responsible for their unfortunate condition. "The leisured classes," of whom M. Laveleye speaks, are in large measure the steam-power of their time and generation. Destroy them with their ambitions and refined tastes, with their love of ideals and ideas, whose culture the possession of comparative wealth makes possible, and the whole race will not only sink to a low material life, but will finally reach a condition where even material prosperity will cease.

The appended essay on "Law and Morals in Political Economy," while presenting nothing new, well emphasizes the basis of economic well-being in morals and hygiene, and also that of property in economic utility.

JOHN J. HALSEY.

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CRIME AND ITS CAUSES. By WILLIAM DOUGLAS MORRISON, of H. M. Prison, Wandsworth. London: Swan, Sonnenschein & Co.

THIS is a thoughtful and thought-suggesting book, which had its genesis in an experience of fourteen years in connection with H. M. Prison at Wandsworth, England, and

is well worthy of consideration by penologists, whether specialists or amateurs.

In arriving at the causes of crime, or in testing theories in regard to it, the inductive method is rigorously enforced by the author, and all available facts and statistics are aggregated, and the result is that a good many opinions largely accepted among penologists make a bad showing and some new theories gain a foothold. In short, the writer is constructive as well as destructive.

The author deprecates the insufficiency of criminal statistics, both national and international, but the exhaustive analysis of what we have brings conclusions which demand attention. In fact, some of his deductions, apparently well established, are almost revolutionary in their importance.

The opening chapter is devoted to the consideration of "the statistics of crime: what they are, what they ought to be, and what they indicate as to the extent and volume of crime." Apparently crime is on the decrease in England and on the increase in other countries, and largely so in France, Germany, and the United States. In regard to England, however, the author is not sure but the decrease of crime is more apparent than real, and after a careful analysis of the statistics at command, is inclined to believe that crime in England, in proportion to population, has not varied materially in the last twenty years.

The gravity of the crime question is indicated by the annual loss of money which the existence of crime entails for its repression, which in England amounts to a tenth of the national expenditures.

The causes of crime the author considers under three great categories: cosmical, social, and individual.

The cosmical factors of crime are climate and the variations of temperature; the social factors are the political, economic, and moral conditions in which man lives as a member of society; the individual factors are a class of

attributes inherent in the individual, such as descent, sex, age, bodily and mental characteristics.

In his chapter upon "climate and crime" the author arrives at the conclusion, by various lines of inquiry, that crimes against property preponderate in cold climates, and crimes against the person in warm climates; so also winter and summer show similar results. This law, modified somewhat by moisture, soil, and the configuration of the earth's surface, seems fairly well established; but in India this law is largely nullified by certain restraining influences inherent in the division of society into various castes. To use his own language:

> "These counteracting forces acting upon Indian society are of such immense potency that the malign influences of climate are very nearly annihilated, as far as the crimes we are now discussing are concerned. India stands to-day in the proud position of being more free from crimes against the person than the most highly civilized countries of Europe."

The reasons for these results are very suggestive of methods for the application of the principles involved in other countries as an antidote to the poisons of a criminal atmosphere.

The effect of seasons upon crime is considered in another chapter, with the conclusion that crime increases or decreases in accordance with temperature, and that each month has an average peculiar to itself; but no remedy is suggested as corrective of this result, and the facts are turned over to physiologists for consideration.

The chapters upon "destitution and crime" and upon "poverty and crime" summarize the results of a very careful study and analysis of a large collocation of facts. The results, apparently, are that destitution as a cause of crime against property does not amount to more than 2 per cent. of the aggregate. Destitution so acute as to necessitate theft or beggary is, apparently, very rare, but beggary or vagrancy as a choice of occupation is common. The first is pitiable and should be tenderly treated, but beggary or

vagrancy, aside from the 2 per cent. caused by destitution, is *ipso facto* criminal and should be dealt with as such. Vagrancy, the author finds,

"is to a large extent entirely unconnected with economic conditions: the position of trade, either for good or evil, is a very secondary factor in producing this disease in the body politic; its extirpation would not be effected by the advent of an economic millennium; its roots are, as a rule, in the disposition of the individual, and not to any serious degree in the individual constitution of society; hence, the only way to stamp it out is by adopting rigorous and effective methods of repression."

What these measures are in different countries are then presented, and the principles found most effective are largely those adopted or recommended by our charity aid associations in America.

As with vagrancy and beggary, so with prostitution, destitution is not a cause of a large proportion, and apparently does not aggregate 10 per cent. of that class of offenders.

In his chapter upon "poverty and crime" the conclusions of the author, even more than in the preceding chapter, antagonize current opinions, and if the statistics furnished are correct, his conclusions are well founded. If poverty is a potent factor as a cause of crime, then the increase of material prosperity in a community or a nation ought to show a decrease of crime; but, unfortunately for this theory, all attainable statistics show the opposite, and crime, or at least crimes against property, decrease as the per capita of wealth decreases. To use the author's own words:

"All these considerations force us back to the conclusion that an abundant measure of material prosperity has a much smaller influence in diminishing crime than is usually supposed, and compels us to admit that much crime would still exist, even if the world were turned into a paradise of material prosperity to-morrow."

In Italy the poor people, in proportion to their numbers, commit fewer offences against property than the well-to-do.

In Prussia persons engaged in the liberal professions contribute twice their proper share to the criminal population. So also in France, statistics for 1879 show that although the liberal professions constitute only 4 per cent. of the population, they were responsible for 7 per cent. of the murders of that year. The author asserts:

"All these facts instead of pointing to poverty as the main cause of crime, point the other way. It is a curious sign of the times that this statement should meet so much incredulity. It has been reserved to this generation to propagate the absurdity that the want of money is the root of evil; all the wisest teachers of mankind have hitherto been disposed to think differently, and criminal statistics are far from demonstrating that they are wrong."

The chapter upon crime in relation to sex and age is one of the most important and most startling in the book, and is worthy of careful consideration, and especially by all women who honestly think that the industrial and political emancipation of their sex is a consummation greatly to be desired. The statistics are pitiless in showing that *pari passu* with such emancipation crime steadily increases. As with sex, so with childhood and youth, the statistics indicate to the author a revision of many popular ideas.

In regard to the bodily and mental characteristics of criminals, statistics do not seem to disclose much of positive value. In England the height and weight of criminals seem to be somewhat below the average, but not in other countries. So also in face, manner, and demeanor, there is no infallible index of character. Heredity counts for something, but physical degeneracy for more. The death-rate among criminals is more than one-third greater than the average. Illiteracy, bad associations, and want of industrial training, however, are potent factors for evil.

The last chapter of the book is an admirable presentation of the methods of conducting convict prisons in England, and there are but few prison officers in America who would not be benefited by its careful consideration. In fact, the

whole book is valuable, not only to prison officers, but to legislators also, and to all others interested in the solution of the prison question.

R. BRINKERHOFF.

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THE UNWRITTEN CONSTITUTION OF THE UNITED STATES: A PHILOSOPHICAL INQUIRY INTO THE FUNDAMENTALS OF AMERICAN CONSTITUTIONAL LAW. BY CHRISTOPHER G. TIEDEMAN, A.M., LL.B., Professor of Law in the University of Missouri. Pp. 165. New York and London: G. P. Putnam's Sons, 1890.

WE have in this work the first general and systematic discussion of the unwritten elements of our national constitution. The author, however, in the narrow space which he has allowed himself, has not been able to cover the entire field comprehended by the title of his book. Broad phases of his subject are scarcely noticed. Thus, for example, no attempt is made to trace the vast though silent expansion of the powers of Congress, through which the carefully contrived "checks and balances" of the written instrument have been practically destroyed. But so far as constitutional growth is due to executive action or the interpretation of the courts, the author's treatment is thorough; and by pointing out the legal and historical justification of that growth he has rendered an original and important service. It would be difficult anywhere else to find so philosophic an explanation of the doctrine of implied powers.

In the first two chapters Professor Tiedeman lays down and develops his major premise. Except in the matter of present form, the statement of Blackstone is false, that municipal law "is a rule of conduct prescribed by the supreme power of the State;" and not less misleading is the view of Austin, that a legal rule only then becomes a law when an English or American court first announces its decision. Law is not originally handed down from above. It grows with the ethical progress of the race,

long before there are legislatures to determine its form or courts to define its application. A legal rule, therefore, "is the product of social forces, reflecting the prevalent sense of right." It follows that if a statute does not give expression to such a *Rechtsgefühl*, it will prove a dead letter; and if anywhere, as on the frontier, government does not exist or is in abeyance, self-help may legally be employed. "If a man is murdered or a horse stolen in such a community, and the offender is captured by the vigilance committee, tried by Judge Lynch, and punished in accordance with the custom of the country, he has suffered the penalty of the law" as much as the individual who, in a more civilized community, is tried and punished in the prescribed manner. "The only difference between the two cases is the degree of development in the administration of the law." For the same reason "bench-legislation" may be legally justified. Ordinarily public sentiment requires a rigid adherence to the rule *stare decisis;* but this rule "is absolutely binding only as it also reflects the prevalent sense of right."

A constitution is likewise the product of social evolution. Its fundamental principles cannot be created by governmental or popular edict; they "are necessarily found imbedded in the national character." Thus the constitution of the United States is mainly a sequential development of English institutions. It has, however, several new elements. Of these the most important are the peculiar character of the federal State; the power of the supreme court to declare acts of the legislature void; and the doctrine that all governmental agencies are the creatures of the popular will, to which belongs the residuum of power. Only the most general elements of our constitution are written. Here, as elsewhere, the real living principles, the "flesh and blood, instead of the skeleton," are unwritten. Accordingly there may be a conscious development in constitutional principles, whether recorded in judicial opinion or not, which will be legally

justifiable so long as it proceeds in harmony with public sentiment. This is the key-note to the very suggestive treatise which follows.

Seven chapters are devoted to an examination of the principal decisions and administrative acts which mark the growth of our unwritten constitution. Not even an outline of them can here be given. It will perhaps be enough to say that the argument is vigorous, unusually clear, and generally convincing. Most original, probably, is the discussion of State sovereignty and the right of secession. Rejecting all previous definitions, the author declares that with us the sovereign is the "aggregation of individuals who do now possess the supreme power of the land." Hence the written constitution could not "locate the sovereignty of the country." Whether it was lodged in the federal Union or in the individual States remained in doubt until the question was determined by the court of arms.

Consistently with his premises the author concludes his discussion by exposing the fallacy of two popular theories. The government of the United States, notwithstanding the view commonly held since the adoption of the tenth amendment, is not strictly one of enumerated powers. On the contrary, powers prohibited to the States, but neither prohibited or delegated to the general government, may justly be exercised by the latter. "For it would be impossible to conduct a government no branch of which can exercise a necessary power, unless it has been granted." Again, the so-called cardinal rule of interpretation, as generally understood, leads to strained and illogical constructions. The intention of the law-giver should indeed be respected. But the "real law-giver is not the man or body of men which first enacted the law ages ago; it is the people of the present day who possess the political power." That interpretation should prevail which best reflects the existing sense of right. The judge "must find out what the possesors of political power now mean by the written word."

Professor Tiedeman has made a scholarly contribution to institutional science; and his book will be heartily welcomed by educators as a needed complement to the works of Wilson, Cooley, and Bryce.

GEORGE E. HOWARD.

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THE NEW YORK REFORMATORY IN ELMIRA. By ALEXANDER WINTER, with Preface by HAVELOCK ELLIS. Pp. x, 172. London: Swan, Sonnenschein & Co., 1891.

MR. ALEXANDER WINTER'S book on the Elmira Reformatory is an important contribution to penological literature. The fact that it is published simultaneously in England and Germany indicates the increasing interest abroad in this remarkable institution.

The preface is by Mr. Havelock Ellis, author of *The Criminal*, in the "Contemporary Science Series." He says: "It has not been on the old continent that the practical treatment of the criminal has of late years received its chief impulse. For the epoch-making period we must turn to the United States."

Mr. Winter's book presents the most complete and sympathetic description of the Elmira Reformatory that has yet been published. He describes in detail the reformatory treatment used in the institution; the diagnosis of the physical, intellectual, and moral condition of each inmate upon entrance; his assignment to school and industrial work; the mark system, and the process of promotion from grade to grade.

Mr. Winter brings out the fact, which is sometimes not sufficiently understood, that a release from the Elmira Reformatory does not depend solely upon the record made. He says: "The qualification for discharge necessitates not only unexceptionable conduct and fulfilment of rules, but a certain assurance that the criminal has actually become a converted and better man, and both can

and will conduct himself with propriety in the future, and that above all things he is thoroughly qualified to supply his needs and to maintain himself by upright and honest means."

Mr. Winter is deeply impressed with the power of Superintendent Brockway's personality throughout the institution. He says: "Brockway is not only the director of the establishment, he lives among the inmates; he lives and thinks with them, with each individual."

Like other observers, the author notes the predominance of intellectual and ethical teaching, over religious teaching as a reformatory influence at Elmira.

Mr. Winter prefers the Elmira parole system, with supervision by an officer of the institution or friendly citizens, to the British ticket-of-leave system, which places the liberated prisoner under the control of the police.

Mr. Winter does not sympathize with the legislators of the State of New York, who have barred productive labor at the reformatory. He is much impressed by Mr. Brockway's proposed plan of a system of self-support among the prisoners. Mr. Brockway desires to open an account with every prisoner, and to charge him with his board, lodging, clothing, medical treatment, etc., crediting him with his labor and its actual cost to the State, the prisoner to have the surplus, and not to be liberated as long as the balance is against him.

Superintendent Brockway's remarkable experiments in physical culture made in 1886 are fully described. Men of low intellectual power and sluggish temperament were put through a vigorous course of physical training, dieting, Turkish baths, and special school discipline, accurate records being kept of the results. As a result several of these men were aroused from their torpor and were stimulated to intellectual endeavor, which resulted in great improvement.

The military organization, which was established in 1888, is described with approval.

Mr. Winter accepts, without question, the claims of the institution that 83 per cent. of the inmates are successfully reformed.

The value of Mr. Winter's book would have been greatly increased had he compared the Elmira system with the reformatory systems of European prisons, especially those of Great Britain. While it is true that they have no reformatories dealing exclusively with the class of inmates received at Elmira, it is also true that most important results have been claimed for the improved prison system which has existed in Great Britain for the past ten or fifteen years.

The book presents an ideal picture of Elmira, rather than an actual picture. It is not exactly one which would have been drawn by an inmate or an officer of the prison, setting forth its actual daily operation. Mr. Winter's enthusiasm grows as he progresses, until the idea that the institution is a prison seems to vanish from his mind, and he even ceases to speak of it as such, but speaks of the "institute" instead.

Incidentally, and apparently without intention, Mr. Winter has brought out what seems to some of Mr. Brockway's friends one of the great defects of the institution, namely: the fact that its vitality appears to be dependent upon the personality of the superintendent. There is no Elmira system. The new reformatories have been able to follow Mr. Brockway's lead only to a limited extent. Were Mr. Brockway to die, the institution would straightway lose its identity to a large degree, unless some other Brockway were to arise. It would seem also as if Elmira ought to be able to furnish at least assistant superintendents for the newer reformatories as they grow up, but thus far it has done practically nothing in the way of training officers for the newer institutions. The ideal reformatory would be one which a man of unusual fitness and capability might carry on in the lines which have been

established, but it is doubtful whether this would be possible with Elmira as it is.

If Sir E. F. DuCane, the chief director of British prisons, or some one equally competent, could make as complete and appreciative a study of the Elmira reformatory as Mr. Winter's, and draw an impartial comparison between the Elmira system and the British prison system, the result would be of great value; but Mr. Winter's book, with Mr. Brockway's published reports, affords material for a reasonably fair comparison, which we hope some one will make.

H. H. HART.

St. Paul, Minn.

NOTES.

THE Table of Contents and Index to Volume I. of the publications of the American Academy of Political and Social Science were sent to members and subscribers with the closing number of the volume, *Theory and Technique of Statistics*, Part II., issued as May supplement.

THE Academy has received from the translator, Mr. W. E. Curtis, a copy in English of the Constitution of the Republic of the United States of Brazil, a new evidence that the establishment of the Bureau of American Republics will result in giving to the country information of value. A translation of the Constitution of Brazil has also appeared in the Political and Social Science publications of Trinity College (N. C.).

A REQUEST has been received by the Academy for permission to translate the monograph by Dr. J. S. Billings, on "Public Health and Municipal Government," into the Dutch language. A similar request had been received some time previously for permission to translate this paper into the Russian language.

THE MAY SUPPLEMENT TO THE ANNALS OF THE ACADEMY, which was the last number of the first volume of the publications, consisted of the translation of the second part of Meitzen's *Statistics*. Its scientific value to scholars and investigators has received gratifying recognition. It is proposed to continue and to broaden this feature of the Academy's activity during the coming year. The field of sociology will receive attention, as well as that of political and economic science. As has been announced elsewhere, the present volume of the ANNALS will consist of bi-monthly instead of quarterly issues.

THE *Revue Sociale et Politique*, published at Brussels, Belgium, has issued three numbers of its first volume. The third number contains an excellent bibliography of works relating to methods of voting in the general elections of different countries. The list contains 339 titles, and has been prepared by H. Lafontaine, Member of the Court of Appeals at Brussels.

MISCELLANY.

THE ETHICS OF THE DECLARATION OF INDEPENDENCE.

On the face of it, the Declaration is a strongly purposive document which the results of the century past will in the main be held to have justified.

Ethically considered, the Declaration makes pretence to the statement of four principles, which are, in order, the principle of equality, the principle of government by consent, the principle of independence, and the principle of prudence.

"Prudence will dictate that governments, long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." But the principle of independence will dictate that, "when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security." These principles are, perhaps, too well recognized in theory to require comment. Also evident is it that life, liberty, and the pursuit of happiness are unalienable: one cannot transfer his own nor receive another's. At the most the despot can but destroy them. If secured or perpetuated to any one, it can only be to the individual who possesses them already. To secure them, "governments are instituted among men, deriving their just powers from the consent

of the governed." That is, according to the Declaration, government is a common act whereto many individuals agree, and have a rightful voice by reason of their equality: which leads us to the first and altogether the most remarkable principle enunciated, "that all men are created equal." And this principle is the real ethical groundwork of the Declaration.

To most minds, or to a well-constituted perception at least, it would seem as if no truth could be more self-evident than that all men are created *un*-equal. On principles of causation we should also expect this to be so: for unequal conditions of parentage, birth, environment, rearing, and experience attend us all. Even allowing for the principle that plurality of causes may produce like effects, the results in the case of a numerous humanity must be various. In truth, the principle of singularity, of oddity, of numerical identity, combined with absolute idiosyncrasy, is the indelibly wrought character of every man.

Paying regard, then, only to the principle of absolute non-equality in man as expressing his true character, it is still in point to ask, What would be meant, as applied to men unequal in every particular and in total character, by the statement that "they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness?"

First, as to the right to life. If it be true that all men are unequal *in toto*, and unequal in every particular, it follows that the life which is a man's is likewise unequal to the life of any other. The life, therefore, to which he has a right is the peculiar, individual life which is his already. For, furthermore, life apart from individuals, that is, from any individual, would be no life at all. There is no common boon of life, common as the air is common, externally to the individual. To get a taste of "life," in the vulgar sense, is to experience the things, fashions, activities, and amusements that are common. But life itself, being indi-

vidual to the person, a right to it can be clearly defined only as a right to be what one peculiarly is or may be.

Again, as to the rights to liberty and the pursuit of happiness. Each man being of unequalled nature, a right to liberty or the pursuit of happiness must likewise be defined as a right appertaining to that unequalled nature. Happiness indeed may be sought in common modes of living or possession. But the *pursuit*, or the bending of the active powers of the man toward an intended object, is a peculiarly personal and idiosyncratic process. And the right to it, as to liberty, can be defined clearly only as a right for what one peculiarly is or may be.

"To secure these rights," the Declaration proceeds, "governments are instituted among men." By implication, therefore, government is not for the purpose of securing happiness directly, nor good for the greatest number directly, for, furthermore, it would violate the principle of unalienable rights, for government, for any man or set of men, to dictate or assume to judge what is good or happiness for any other man or set of men. The security of personal life, liberty, and pursuits is then its first aim. It is needless to remark here upon the fact that laws affecting conduct, which at first sight would seem to trangress this principle and abridge the rights of individuals, have for their real object the better security of those rights.

Government, or a method of treatment to secure those rights, includes conversely the right of every man to be treated as a peculiar and individual entity. And at this point, though having started out with a principle apparently anomalous to the Declaration, we penetrate to the very core of its purpose, for it is every man—that is, all men equally—to whom belongs the right to be treated each as an absolutely unequalled entity, the inwardness of whose personality is a mystery alike inviolable and beyond our ken. To make use of a paradox, all men are equal because no two are equal; all are equally unequal, equal

only by reason of the prevalence of this universal principle of non-equality. Were two or any number really equal then there would be a basis of classification whereby the inequality of the remainder might be distinguished. But classifications and class distinctions as applied to men, every soul of whom is in essence an original classifier, are but as scales that fall from him, and fade into insignificance before the miracle of his being. The tremendous ethical import of the Declaration is that in effect it sets up the strictly and peculiar character of prince and commoner alike, and even of the fool, as a sacred object to which all customs and traditions, all accessory marks and distinctions of power and possession, must of right give place.

When the representatives in Congress declared "that all men are created equal," it is doubtful if the true ground of the Declaration was defined, defined at least in a manner clearly obvious to all. It was the dictum of profound judgment, no doubt, but under exigent circumstances. The leaders had felt the break with England coming; they had anticipated the form the opposition would take; their attitude on this occasion was the frequent attitude of reformers who, long speechless victims, feeling rather than defining the wrongs they suffer, gradually have come to the full consciousness that the remedy lies solely in the overthrow of existing systems, and, finally, with the determined purpose to accomplish the revolution at all hazards, are ever wont to rest in justification of their action on a basis of principles affirmed to be patent to the knowledge of all men in the exercise of right reason. The principle of equality was affirmed instinctively rather than philosophically, and their declaration of it was creative rather than explanatory. They hit upon it as the principle needed to justify their end, rather than justified it or deduced their purpose from it. Certainly, they could not claim independence on the ground of superiority to England, though the latter claimed it over them. But they happily escaped the error of small minds, which is to adopt the tactics of

the enemy, and so, in the very act of opposing them, virtually to succumb to their methods. As the basis of an independent movement, they fortunately hit upon an independent principle, whose success was a distinct advance in the evolution of government. They could claim equality with their English brethren without shocking the intelligence of the world, and probably the real principle which justified America to civilized Europe, and, aside from considerations of policy, gained for her recognition abroad, was the conclusion which followed from the declaration of her *equality with England*, rather than the deeper principle of universal equality as applied to all persons whatsoever.

That the conception of the equality of men had not ripened into the perception of the real ground of that equality, at least in popular knowledge, is further evidenced by the fact that the principle was held in abeyance for nearly a century, while the essential manhood of an enslaved race was denied recognition. And though civil statutes of to-day recognize it, the principle of equality has hardly as yet penetrated the confines of the body social, wherein the injustice done it is of a more insidious description, which statutory remedies are inadequate to cure. Much less has it found its way to its final vantage place among the common ethical motives which govern the daily conduct of men toward men—a condition of things which Utopian schemes of universal benefactions will do well to consider. But the revolutionists, feeling the injury of unequal treatment, were driven by circumstances to adopt a conception of mankind in accordance with which the evil might be abolished. Here the conception of equality, being *for the purpose of treatment*, presented no difficulty; it meant the equal rights, privileges, protection, justice, and liberty to which, as compared with English subjects, they felt themselves entitled. The equalities and inequalities of the time were those of caste. To be equal with another meant to be treated with the same consideration, and, conversely, to have equal station and rank was

practically to be equal. This latter view is probably the nearest approach we can make to the spirit of the prime dictum of the Declaration, and its correctness is confirmed by the fact that the representatives of the colonies were met with the avowed purpose of considering principles of government. The whole instrument is, therefore, to be interpreted in the light of that purpose which at the time eclipsed all others. For the purpose of government it was that men were equal, that is, though they be not equal at all, yet are they to be governed with equality.

Recalling now the ethical ground of this principle of equality, which makes it eternally a true one, that every person is a unique and unequalled entity, we may see how the very fact of inequality in persons gives rise to the principle of equality of treatment, the rights to life, liberty, and the pursuit of happiness being admitted as defined at the outset without discussion. For, without knowing fully what you are, I desire to treat you with respect to these rights. Beyond the qualities which are evident, I know that you are an individual whose personality is an inscrutable mystery. However deeply I sympathize with you, or however shrewdly I diagnose you or, as they say, "size you up," nevertheless if I treat you according to my summation of your qualities only, I do you the basest injustice, and deal with you as an inferior thing, which my knowledge comprehends and is superior to. But the character of a man and my knowledge of him can be proportioned only as a surd to another quantity. If I treat a man according to my comprehension of him only, how do I know that I am not trespassing upon his right of life, liberty, or pursuits? How can I avoid thus trespassing, but by making it a universal principle of conduct to accord to every man that treatment which has regard also for the individual *inequality* of his nature? It results, therefore, that, although all differ and are unequal, yet in one transcendent respect I am, if I admit these rights, ethically

bound to treat all *as* equal, compassing no limitation nor detriment to life, liberty, or the pursuit of happiness.

So much in exposition of the ethical basis of the Declaration. I attempt no argument in its favor, believing that, however imperfectly legislation may embody it, the principle involved will not fail ever to commend itself to the intelligent judgment of a free people.

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